

1959

Present : Basnayake, C.J., and Sansoni, J.

JANANANDA THERUNNANSE, Appellant, and RATANAPALA
THERUNNANSE, Respondent

S. C. 251—D. C. Matara, 22604

Buddhist Temporalities Ordinance—Register of bhikkhus—Power of Registrar-General to alter or correct entries made therein—Sections 41 (2) (a) (i), 41 (5).

By section 41 (5) of the Buddhist Temporalities Ordinance—

“ The Mahanayaka Thera or Nayaka Thera of every nikaya shall from time to time make all such corrections, additions or alterations in his registers as may be necessary to keep up to date his registers of upasampada bhikkhus and sameneras of his nikaya and the relevant details regarding them ; and whenever he makes any such modification in his registers he shall forthwith convey that fact to the Registrar-General who shall similarly modify the registers he is required to keep by this section .”

Held, that the corrections, additions or alterations which fall within the ambit of the section are only such as are of a routine nature and are undisputed and do not prejudice the rights of others. The Registrar-General must not modify the registers he is required to keep unless the corrections, &c., made by the Mahanayaka or Nayaka fall within the ambit of the authority conferred by section 41 (5).

An Upasampada bhikkhu had declared on 5th January 1944 in Form A under section 41 (2) (a) (i) of the Buddhist Temporalities Ordinance that the date of his robing was 15th October 1940. Seven years after the declaration the date of robing was at his instance altered in the registers to 15th October 1938.

Held, that the alteration was not necessary to keep the registers up to date within the meaning of section 41 (5) of the Buddhist Temporalities Ordinance and was, therefore, unauthorised.

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

N. E. Weerasooria, Q.C., with *H. W. Jayewardene, Q.C.*, and *S.D. Jayasundera*, for Defendant-Appellant.

D. S. Jayawickreme, Q.C., with *A. F. Wijemanne* and *A. W. W. Goonewardene*, for Plaintiff-Respondent.

November 11, 1959. BASNAYAKE, C.J.—

The only points argued in this appeal are—

- (a) whether the rule of succession governing the Galgane Purana Viharaya is the rule of *sisyanu sisya paramparawa*, and
- (b) whether Talahagama Deepananda Thera is the senior pupil of Beragama Kavidhaja Thera.

Now in regard to (a) the appellant relied on two documents D2 and D12. The former reads as follows :—

“ I Angahawatte Ratnajothi Therunnanse the Chief incumbent of Galgama Viharasthana at Deundara throughout I have been in the course of performing all the duties appertaining to the said Aramaya. And as I have been appointed at present to perform the office of Adikariship of Deundara Mahavihara. That out of the two pupils of mine Mirisse Gunaratana and Beragama Dhammananda I do hereby appoint the eldest the aforesaid Mirisse Gunaratana to the Adikariship of the aforesaid Galgane Viharasthana so that he may administer and use all the moveables and immoveables appertaining thereto according to the rites of religion.

“ Sincerely the office of Adikariships shall go to the eldest in succession and for the purpose of having the succession upheld in the aforesaid manner that after his death it shall devolve on my next pupil, Beragama Dhammananda.

“ Further I do hereby declare that none out of another Nikaya other than that of our tutors shall become the Adikari thereof.

“ That if in any way there happened to be none out of my pupillary succession to come to the administration of this Aramaya the eldest personages of the Nikaya shall appoint a suitable successor.

“ And I Augahawatte Ratanajothi Therunnanse aforesaid do hereby set my hand to these presents on this 10th day of December 1896 at Galgane Viharasthana.

Sgd Ratanajothi.”

and the latter as follows :—

“ Know all men by these presents that I Beragama Dhammananda Therunnanse Viharadhipathi of Galgane Vihara at Deundara in the Wellabodapattu of Matara District Southern Province being at present in ill-health and in old age and finding it difficult to carry on the administration of the Aramaya and also attend to the religious necessities of the Dayaka people and others I do hereby appoint out of my pupils Beragama Kavidaja, Bandattara Jananda and the Samenera pupils, Deundara Dhammaloka, Mirisse Gunaratana and Makawita Ratanapala. The first named Beragama Kavidaja to the adikariship of the Viharasthana and of all the moveable and immoveable properties appertaining thereto to be taken care of and for use and enjoyment according to the rites of religion of the premises called Deundara Rajamaha Viharasthana.

“ That the said Beragama Kavidhaja shall perform the duties of the said office of Adikariships and after his demise shall be entrusted over to the aforesaid Bandattara Jananda and after them the said Adikariship shall go to the eldest of my pupillary succession accordingly. And it is further ordered that if any of my successors of the pupillary

succession were to join any other Nikaya than Sri Dhammarakkhita wansa, Amarapuranikaya such pupil shall lose all right whatsoever to the aforesaid office or if assigned over to such person such assignment is declared invalid.

“ The act of appointment is signed and granted by me the aforesaid Beragama Dhammananda on this 4th day of August 1935 at Galgane Viharasthana on a six cents stamp.

Sgd Dhammananda.”

They both refer to the office of Adhikari and not to that of Viharadhipati. The context shows that the authors of the two documents were using the expression “ adikari ” in contradistinction to the expression “ viharadhipati ”. The author of D2 was appointing Mirisse Gunaratana as adhikari of Galgane Viharaya and not its viharadhipati, while the author of D12 was appointing Beragama Kavidaja to the office of adhikari as distinguished from the office of viharadhipati. It is well established that the offices of viharadhipati and viharadhikari are not the same and these two documents afford evidence of that fact.

These documents do not establish that the rule of succession to the temple in dispute is one other than the rule of *sisyanu sisya paramparawa*. Later in the course of his argument learned counsel who has considerable experience in actions relating to Buddhist Ecclesiastical law seeing the force of the documents D2 and D12 quite properly did not press his argument that they supported the claim that the rule of succession to the temple in dispute was not the rule of *sisyanu sisya paramparawa*.

Now, in regard to the second point, plaintiff asserts that he is the senior pupil. The defendant relies on the amended statement in the declaration in Form A made by Deepananda under section 41 (2) (a) (i) of the Buddhist Temporalities Ordinance on the occasion of his becoming an Upasampada bhikkhu. In that form he had declared on 5th January 1944 that the date of robing was 15th October 1940. Subsequently on 8th September 1951 Deepananda wrote to the Mahanayake of his Nikaya (D26) Pelene Sri Vajiranana informing him that the date of robing, 15th October 1940, in cage 5 should be altered to 15th October 1938 and that cage 7 should be altered as “ Name of Achariya Bhikshu : Enrobed by Uyangoda Sumanajoti Sthavirapadayawahanse as a pupil of Beragama Kavidhaja Stavirayanwahanse.” At the same time he addressed a similar communication to the Registrar-General. The Registrar-General appears to have made in his register the alterations made by the Mahanayake Vajiranana in cages 5 and 7 of his register upon receipt of a communication from him. In doing so the Mahanayake and the Registrar-General appear to have regarded section 41 (5) as sufficient authority. That provision of the Buddhist Temporalities Ordinance reads—

“ (5) The Mahanayaka Thera or Nayaka Thera of every nikaya shall from time to time make all such corrections, additions or alterations in his registers as may be necessary to keep up to date his registers of upasampada bhikkhus and samaneras of his nikaya and the relevant

details regarding them ; and whenever he makes any such modification in his registers he shall forthwith convey that fact to the Registrar-General who shall similarly modify the registers he is required to keep by this section.”

The corrections, additions or alterations in his registers that a Mahanayaka or Nayaka may make are limited to such as may be necessary to keep up to date his registers of upasampada bhikkhus and samaneras of his nikaya. Subsection (5) cannot therefore be read as authorising a Mahanayaka or Nayaka to make any correction, addition or alteration whatsoever. The Registrar-General is not bound to modify the registers he is required to keep unless the corrections etc. made by the Mahanayaka or Nayaka fall within the ambit of the authority conferred by section 41 (5). His statutory obligation to modify his registers arises only when such corrections, additions or alterations as may be necessary to keep the registers up to date have been made by the Mahanayaka or Nayaka in his registers and are conveyed to him. “Up to date” means not behind the times ; with the latest information, facts or methods ; keeping abreast of the times ; regarded as prevailing at the present time. Learned counsel stated from the bar that the practice is for the Registrar-General to modify his register whenever the Mahanayaka or Nayaka modified his register and conveyed that fact to him without pausing to examine whether the corrections, additions or alterations are such as fall within the ambit of subsection (5) or not. That practice is not in accord with the statute and should stop. Now in regard to the alteration of the date of robing from 15th October 1940 to 15th October 1938 we are unable to hold that that alteration was necessary to keep the registers up to date. In our opinion the alteration is not one authorised by section 41 (5). Deepananda’s only explanation is that 15th October 1940 was entered by an oversight. Apart from the fact that the alteration was not one authorised by the statute his claim that he was in fact robed on 15th October 1938 has to be approached with the greatest caution especially when it is to his advantage and has the effect of placing the plaintiff below him in order of succession to the office of viharadhipati and is made—

- (a) seven years after the original declaration,
- (b) after the death of his teacher Kavidaja,
- (c) less than three months before the institution of this action, and
- (d) at a time when the disputes which culminated in these proceedings had become manifest.

A further circumstance which seriously affects the genuineness of Deepananda’s claim is the failure of the defendant to produce the declaration made under section 41 (2) (a) (ii) when Deepananda became a samanera. The Ordinance requires that declaration to be made by the robing tutor and the samanera within one month of the robing when the date of robing is fresh in the minds of the declarants. The absence in section 41 (5) of any machinery for affording an opportunity of being heard to any person adversely affected by any correction, addition or

alteration is a further indication that the corrections etc. which fall within its ambit are only such as are of a routine nature and are undisputed and do not prejudice the rights of others, for if the Legislature had intended to bring within the ambit of the section corrections etc. which affect the rights of others machinery for giving such persons an opportunity of being heard would have been provided. It is a rule of interpretation of statutes that the Legislature is presumed not to legislate in derogation of the principles of natural justice, *New Zealand Dairy Board v. Okitu Co-operative Dairy Company Limited*¹. The alteration made in the instant case has the effect of causing grave prejudice to the plaintiff in that it made it appear that Deepananda was senior to him in the pupillary line.

The appellant has failed to satisfy us that the judgment of the learned District Judge should be set aside on the ground of error in law or fact.

We accordingly dismiss the appeal with costs.

SANSONI, J.—I agree.

Appeal dismissed.

