

1937

*Present : Moseley J. and Fernando A.J.*

SUMANATISSA *v.* GUNERATNE.

158—*D. C. Matara, 8,777.*

*Buddhist law—Succession to incumbency of vihare—Terms of original dedication—Proof of special rules—Insufficient to displace general rule of succession—Sisyanu sisya paramparawa—Prescription.*

The rule of succession to the incumbency of a Buddhist vihare is governed by the terms of the original dedication.

If the terms of the original dedication cannot be proved either by direct evidence or by the evidence of usage, then it must be presumed that the rule of Sisyanu sisya paramparawa applies, unless it can be established that the succession is governed by Siwuru paramparawa.

*Ratnapala Unnanse v. Kevitiagala Unnanse (2 S. C. C. p. 26) followed.*

**A** PPEAL from a judgment of the District Judge of Matara.

*H. V. Perera, K.C.*, (with him *N. E. Weerasooria*), for plaintiff, appellant.

*Hayley, K.C.* (with him *L. A. Rajapakse*), for defendant, respondent.

*Cur. adv. vult.*

June 7, 1937. FERNANDO A.J.—

The plaintiff-appellant filed this action for a declaration that he is the incumbent of the temple in question, named the Welihinda Temple, and he claimed to be so entitled through his tutor priest, Sudassi who died in 1928. Sudassi had two pupils: Meerupe Gunananda and the plaintiff. During his lifetime, Sudassi appointed Gunananda to be his successor by the document P2 of 1928. In 1930 Gunananda by document P3 appointed the plaintiff as incumbent in his place. Plaintiff, however, claims the incumbency not on the strength of the document P3, but as a pupil of Sudassi, and as entitled by the rule of succession known as *Sisyanu sisya paramparawa*.

The case for the defendant as placed before the District Court was that the succession to the incumbency of the temple was not governed by the rule of *Sisyanu sisya paramparawa*, but by a special set of rules agreed upon in 1872 and referred to as a *Katikawa*.

The learned District Judge held that according to the rule laid down in the *Katikawa* the incumbency should have gone after Sudassi's death to the defendant who was the senior resident pupil of Attanikata Suman-gala, and that the rule of *Sisyanu sisya paramparawa* did not apply because of this special rule that appeared to have prevailed in this temple for over 50 years. He accordingly dismissed plaintiff's action and declared that the defendant was the lawful incumbent.

The plaintiff appeals against this order, and it was argued for him that the general rule must apply. Counsel referred to the judgment of this Court in *Unnanse v. Unnanse*<sup>1</sup> where De Sampayo J. stated that, "there were only two rules of succession known to the Buddhist law, namely: *Sisyanu sisya paramparawa*, or pupillary succession, and *Siwuru Paramparawa* which is also a form of pupillary succession, but with the special characteristic that the pupil is a blood relation of the original priestly incumbent, and that in the absence of any evidence to the contrary, the presumption is that the incumbency is subject to the *Sisyanu sisya* rule of succession". Reference was also made to the case of *Goonaratne Unnanse v. Daramaananda*<sup>2</sup> where it was held that according to the *Sisyanu sisya* rule, there was no failure in the succession so long as there remain direct pupillary successors to any previous incumbent.

Counsel for the respondent argued that it was open to a party claiming an incumbency to prove the existence of a rule of succession other than the *Sisyanu sisya* or the *Siwuru paramparawa*. He referred to the judgment of the Full Court in *Ratnapala Unnanse v. Kevitiagala Unnanse*<sup>3</sup> where Phear C.J. laid down certain principles which he had gathered

<sup>1</sup> 22 N. L. R. 323.

<sup>3</sup> 9 S. C. C. 26

<sup>2</sup> 22 N. L. R. 276.

from the earlier cases. Those principles are as follows: (1) The general rule of succession has two branches, namely, Sisyā paramparawā and Siwuru paramparawā, and it is the first branch of the rule which is to be presumed *in the absence of evidence that it is the other*. (2) There are exceptional cases in which the succession to the temple property is in the appointment of Government or of private individuals. (3) It is the terms of the original dedication that primarily impose the rule of succession. (4) In the absence of direct evidence of these terms (of dedication) usage may be looked to, and accepted as evidence *thereof*. If I may venture to formulate the position as governed by these principles as applying to the present case, the law is that the rule of succession is governed by the terms of the original dedication, or by one of the two rules of succession, and if the terms of the original dedication cannot be proved by direct evidence, the Court may accept evidence of usage as proving the terms of the original dedication. If the terms of the original dedication cannot be proved either by direct evidence or by the evidence of usage, then it must be presumed that the Sisyānu sisyā paramparawā rule of succession applies unless it can be established that the succession is governed by the Siwuru paramparawā.

Now the contention for the defendant is that the Sisyānu sisyā paramparawā rule did not apply and that the rule of succession was governed by the Katikawā or the set of rules adopted in 1872, and there was no suggestion that those rules had any reference to or derivation from the terms of the original dedication. D3 purports to be a copy of this Katikawā, and an examination of it shows that there were 10 rules concerning the duties to be performed by the person accepting the chief incumbency. Rule 7 of these rules provides that in the event of the chief incumbent being unable to perform his duties the next senior resident priest shall act on his behalf, and perform the duties of the former. Rule 10 provides that if the chief incumbent does not do his duty and if information of his failure to act carefully is given to the Sāṅga Sabawā, the priests and laymen shall meet in the temple and investigate the complaint, and if the complaint is found true, the chief incumbent may be removed and the next senior priest of the temple appointed chief incumbent, and the document ends by a statement of the signatory that he was asked to form a mode of rules for the use of younger priests, that he had delayed in the compilation of these rules, and that the code of regulation contained in D3 is framed at the request of the younger priests. There was some question in the Court below as to whether the document was admissible, inasmuch as there is nothing to show that it is a true and correct copy of the original and the original itself has not been produced. In these circumstances, I think, the document was inadmissible, but I propose to deal with the case on the footing that the document was properly before the Court. If the document was properly before the Court, the question arises as to whether it contains any evidence of the terms of the original dedication and it is obvious that the document does not contain any reference to the original dedication, and according to the principles laid down by the Full Court in *Ratnapala Unnanse v. Kevitiagala Unnanse* (*supra*) that document is of no assistance in determining the rule of succession that applies to this Vihare.

Counsel for the respondent also referred to the case of *Sangharatne v. Weerasekera*<sup>1</sup> where Layard C.J. after stating that “the simple question to determine is whether any definite rule of succession other than the Sisyā paramparawa had been established in respect to the succession of the Vihare in question in that case held that there was absolutely no evidence to establish the terms of the original dedication that primarily imposed the rule which is to govern the case. Having come to this conclusion, Layard C.J. proceeds, “of course in the absence of such direct evidence, we are at liberty to see if any usage has been established, and if such usage has been clearly proved, *it may be accepted as evidence of the terms of the original dedication.*” I do not think this judgment helps the respondent either. Layard C.J. thought that evidence of usage may be accepted but it was only to be used as evidence of the terms of the original dedication. In other words, if it had been proved in that case that a particular rule of succession has prevailed continuously in that particular temple, then he might have presumed that that rule which had applied continuously, was the rule laid down in the terms of the original dedication. In the case before me, however, the evidence is to the effect that in 1872 at a meeting held at the temple some new rules of succession was adopted, and that that new rule must govern the succession from that date, and as I have already said, there is no authority that lends support to this argument.

Counsel for the appellant also contended that the defendant in this action was barred from maintaining the action by Ordinance No. 22 of 1871. It has been held by this Court that a claim to an incumbency is barred after the expiration of a period of three years. He further argued that if the defendant was entitled to the incumbency by the rule of Sisyānu sisya paramparawa then he was entitled to put forward that claim on the death of Attanikata Sumangala. Now it is clear from the evidence that Sudassi was incumbent of this temple for 35 years and Sudassi died in 1928, so that the previous incumbent of this temple died about the year 1893. Assuming then that the defendant was entitled to succeed to his tutor Sumangala a cause of action accrued to him when Sudassi took possession of the Vihare in 1893. It is true that the right to an incumbency is not one that a person can acquire by prescriptive possession, but the claim of the defendant to succeed to his tutor Sumangala is now barred by the provisions of the Prescription Ordinance.

The appeal must, therefore, be allowed and decree will be entered in favour of the plaintiff with costs in this Court and in the Court below.

MOSELEY J.—I agree.

*Appeal allowed.*