

1939 Present : Moseley A.C.J. and Soertsz S.P.J.

DHAMMANANDA THERO *v.* DHAMMAPALA THERO.

319—D. C. Kurunegala, 18,787.

*Buddhist ecclesiastic law—The appointment of successor by incumbent—Application to disrobe and re-robe the pupil of another priest—Terms of letter—Validity of appointment.*

The incumbent of a temple who had an only pupil the defendant, a Samanera, applied to the Mahanayake to have the plaintiff, Upasampada pupil of another priest, to be disrobed and re-robed in his name as his pupil.

In his application the grounds alleged were that the incumbent was "sick and confined to bed since two months and as there is no elderly Upasampada pupil or junior suited to render assistance to me and to take care of the place and pansalas".

*Held*, that the document did not constitute a selection or appointment of the plaintiff to succeed to the incumbency.

*H. V. Perera, K.C.* (with him *Sri Nissanka* and *V. F. Gunaratne*), for the plaintiff, appellant.

*L. A. Rajapakse* (with him *J. R. Jayawardana*), for the defendant, respondent.

*Cur. adv. vult.*

October 11, 1939. MOSELEY A.C.J.—

The plaintiff brought this action to establish his claim to the incumbency of the Keppitiwalana Vihare which was held under the tenure known as *Sisyanusisya paramparawa*. The incumbency became vacant upon the death of Hunupola Dhammapala on February 19, 1933. On September 11, 1931, the defendant was robed by and became a pupil of the deceased. He was then aged eleven. Until February 7, 1933, the plaintiff, who by that time had become an Upasampada monk, had been the pupil of another, but on February 4 of that year, the deceased by document P 8



applied to the Maha Nayaka for the disrobing of the plaintiff and the re-robing in his name. The grounds for the application were that the deceased incumbent was "sick and confined to bed since two months and as there is no other elderly Upasampada pupil or junior suited to render assistance to me and to take care of the place and pansalas". The plaintiff's case is that in pursuance of this application he was disrobed and re-robed on February 7, and in support of his contention the documents P 1 and P 3 were produced. He further contends that the deceased then made application for his re-ordination which took place on May 13, 1933. As has been already stated, the deceased died on February 19, so that at the date of his death it is clear that the defendant was, as has been found by the learned District Judge, the senior pupil of the deceased. The plaintiff, however, says that the documents upon which he relies indicate that he himself had been selected by the deceased to succeed to the incumbency. The case went to trial on a number of issues which are set out together with the answers given by the learned District Judge as follows:—

- (1) Does a Samanera take precedence over an Upasampada monk even though such Samanera has been longer in robes than an Upasampada monk?

*District Judge* : In view of the answers to the issues (2), (3), (4), (5) and (6) the answer to issue (1) is not necessary.

- (2) Is the Samanera defendant the senior pupil of the deceased Dammapala Terunnanse?

*District Judge*: Yes.

- (3) Was the plaintiff robed by the late Hunupola Dhammapala?

*District Judge*: Yes.

- (4) If he was, was he the senior pupil of the late H. Dammapala upon the latter's death in February, 1933?

*District Judge* : No.

- (5) Did the plaintiff succeed to the Adikariship upon the death of the late H. Dammapala in February, 1933?

*District Judge* : No.

- (6) If he did not succeed in the Adikariship in February, 1933, did he succeed in May, 1933, after the ordination?

*District Judge* : No.

The plaintiff's action was dismissed. From that order he appeals.

It seems to me that the simple issue is whether or not the plaintiff was selected by the deceased to succeed him. It has been argued on his behalf that the deceased had taken every step necessary to ensure that he should be succeeded by the plaintiff, and that had the latter's ordination preceded the death of the deceased the plaintiff's succession to the incumbency would have taken place automatically. That might be so, but it should be borne in mind that had the plaintiff's ordination preceded the death, it would still have been open to the deceased to revoke the implied selection of the plaintiff. If one examines the wording of P 8, which I have quoted above, the phraseology of which appears in the other



documents produced by the plaintiff, it is not impossible to come to the conclusion that the deceased realizing his incapacity through illness, and the youth of the defendant, desired that he himself should be assisted by an older priest and for that reason wished the plaintiff to become his own pupil. That seems to me to be some way from selecting the plaintiff to succeed him in the incumbency.

The *bona fides* of the plaintiff's documents was attacked by Counsel for the respondent, but in the lower Court the learned Judge does not appear to have been impressed, and it will be noticed that the issue in regard to the re-robing of the plaintiff by the deceased was answered in the plaintiff's favour. These documents would certainly appear to be open to suspicion, but I do not propose to differ from the learned Judge's finding in this respect. It is undisputed that immediately after the funeral ceremonies following upon the deceased's death the plaintiff went off to the Pirivena some miles distant and remained there for a year. During that period the defendant officiated as Adikari and his right to do so does not appear to have been questioned.

Counsel for the appellant brought to our notice two recently decided cases (*Saddhananda Tissa Therunnanse v. Gunananda Therunnanse*<sup>1</sup> and *Saranapala Therunnanse v. Piyatissa Therunnanse*<sup>2</sup>), in which it was held that selection in such a case need not necessarily be by deed or last will, but in each of those cases there was a writing which clearly indicated that a selection for appointment had been made. As I have already observed in the present case, it would be unsafe to infer a selection from the wording of the document.

I agree with the learned Judge that the plaintiff has failed to prove that he was the selected successor to the incumbency, and that his action was properly dismissed.

The appeal is dismissed with costs.

SOERTSZ S.P.J.—I agree.

*Appeal dismissed.*

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