1921.

Present : Shaw A.C.J. and De Sampayo J.

WICKREMESINGHE *et al.* *v.* UNNANSE *et al.*

83—D. C. Galle, 16,667.

Buddhist ecclesiastical law—Sanghika *property—Dedication necessary—Dismissal of priest by trustee—Buddhist Temporalities Ordinance.*

It is by a gift that a temple or any other property can become *sanghika*, and the very conception of a gift requires that there should be an offering or dedication. Until a dedication takes place the temple remains *gihi santaka* (lay property). This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests who represent the *Sarva Sangha*, or the entire priesthood. A dedication may be presumed in the case of a temple whose origin is lost in the dim past.

SHAW A.C.J.— I do not think that the Buddhist Temporalities Ordinance is intended to apply to premises that are private property.

SHAW. A.C.J.—The first defendant having to show that his tutor Seelananda was incumbent of *sanghika* property is not entitled to succeed him under the rule of pupillary succession, and as he himself was admitted to the temple at the invitation of the legal owner of the property, he is liable to be removed by them at will.

THE facts appear from the judgment.

The plaintiff called the following witness as an expert witness :—

Gonagala Siddharta, affirmed :—I am Principal of a pirivena—of Bentara Sudharmodaya. I have the title *Sudharma Wagiswara Vinayacharya* and *Karmacharya* of *Poyage* in Kandy. I am entitled to officiate, and have officiated, at an *upasampadawa* ceremony. These are titles conferred to priesthood of Kandy. I am sixty-three years old. I know this temple in the Fort. I did not come to know that this temple has been dedicated. For a dedication there must be a donor, donee, and a gift. There are formalities required. There must be an

assembly of priests—four and more. The property must be shown. The donor and donee must appear before the assembly. Certain words are uttered according as it is a gift to one or more. Uttered three times. Water is poured into the donees' hands. The donees then must possess the property from the time without damage.

No property can become *sanghika* without such a ceremony. Sometimes there is a stone inscription recording the grant, or a deed is given, or a *pinpatraya*. Most are given on some sort of document.

Cross-examined.—The *Chula Wagga* lays it down that, even without a document, if property is given to the priesthood, *it is* given. This is one of the five books of the *Vinaya*. Bowls and umbrellas are given every day. I live at Bentota.

The *Adhipati* is the high priest.

The *Adhikari* is priest officiating under the high priest.

The *Adhiwasi*, who comes from some place, and is there for some time, he is *Adhiwasi*. There can be all these in the temple at one and the same time.

To Court:—

Question.—Who is the man who rules and governs the temple and orders ?

Answer.—The *Adhikari*.

To counsel:—

He acts under the *Adhipati*.

In temples there may be only one *Adhipati* or one *Adhikari*. In cases where there are both, the *Adikhari* consults the *Adhipati*. The *Adhiwasi* acts on the advice of members of a society.

If this temple were *sanghika*, the plaintiff could not eject the defendant.

I never even thought of getting a nominee of mine into the temple. I am known as Gonagala priest. I did suggest about a year ago to Hikkaduwa Pemananda that Saranapala, co-pupil of Sarananda, should be appointed to Galle Fort, as they had fallen out over the Bogahawatta incumbency (*Adhipathi Kama*).

L. W. C. SCHRADER,
District Judge.

E. W. Jayawardene (with him *R. L. Pereira* and *M. de Silva*), for appellants.

A. St. V. Jayawardene and *H. V. Perera*, for respondents.

Cur. adv. vult.

December 15, 1920. SHAW A.C.J.—

This is an action claiming a declaration that certain premises in the Fort of Galle, which have for some years been used as a Buddhist temple and called Sudharmalaya, are not *sanghika* property, and that the plaintiffs and the second defendant, or alternatively the first plaintiff, are entitled thereto as trustees, and for an order ejecting the first defendant therefrom, and directing that the plaintiffs and the second defendant, or alternatively the first defendant, be placed in quiet possession. The District Judge has made the declaration claimed, and has declared the plaintiffs and second

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defendant to be entitled to possession of the premises, and has directed that they should be placed in quiet possession. From this judgment and order the first defendant appeals.

The plaintiffs and the second defendant are the surviving trustees of a society formed in the year 1887 under the name of the Sudharmarana Samagama, for the purposes of the promotion of Buddhism generally, and in particular for the establishment of a place of worship in the Fort of Galle.

The first plaintiff, who is an extensive landowner and a leading member of the Buddhist community in the Fort of Galle, took a leading part in the formation of the society, and he was appointed treasurer of the society, and appears to have provided most of the funds of the society from the time of its inception.

The development of the premises, the subject-matter of this dispute, into the character of a temple appears to have been a matter of gradual evolution; a building was acquired by the trustees in their own names for the purposes of the society, which building forms part of the premises in dispute in the present case.

For some years after its acquisition the building appears to have been used merely as a preaching hall, where priests were invited by the society from time to time for *bana* preaching. At first there was no resident priest, but afterwards it became usual to invite a priest from time to time to reside on the premises. In 1895 a priest named Seelananda Terunnanse of Gandara, of the Amarapura sect, was invited to reside, and he remained in residence for five years. After he left there was an interval, and the society then invited a priest named Ratanajoti, of the Siamese sect, who also remained for about four or five years. This priest had a disagreement with the trustees about money matters, and was requested by the first plaintiff to leave. After that another priest, Seelananda of Bogahawatta, was asked to reside. He was a pupil of a priest, Seelawanse, who seems to have taken an interest in the society and to have assisted the trustee. This Seelananda was of the Siamese sect, and resided at the Sudarhamalaya for about two or two and a half years. The first defendant is a pupil of this priest.

Seelananda left in consequence of a disagreement with the first plaintiff, who complained to Seelananda's tutor Seelawanse, who turned him out and installed the first defendant in his place.

The first defendant has remained in residence since that date, about twelve or fifteen years ago, until the present dispute arose. During recent years the original building has been added to, and has considerably increased in importance. A dagoba was built ten or twelve years ago, and a building was acquired for a vihare some years after. The dagoba was erected by money obtained by subscription among the members of the society, and the building for the vihare was purchased in the name of the first plaintiff, and an appeal for subscriptions was issued by him to the Buddhist public to assist in

defraying the cost. Most of the money for the purchase, however, appears to have been found by him.

Much reliance is placed by the first defendant on the wording of this appeal, to which I shall refer later.

Early in the year 1918 disputes arose between the first plaintiff and the appellant, and the first plaintiff requested him to leave. This the appellant refused to do, with the result that he was charged in the Police Court of Galle with having committed criminal trespass by remaining in the temple and thereby causing annoyance to the controllers, the *dayakayas*.

The Magistrate having heard the evidence dismissed the case on the ground that the dispute was one that should be settled by action in a civil court.

The first plaintiff then complained of the appellant's conduct to the local Sanga Sabawa, which held an inquiry and made some order against the appellant, which is not in evidence in this case. The appellant objected to the constitution of this tribunal, and took no part in the proceedings before it, and appealed to the Chief Priest at Kandy, who reversed the decision of the Sangha Sabawa. We do not know the merits of this dispute, and they are not relevant to the present case, and I only mention them as part of the history of the dispute leading up to the present litigation.

After the Police Court proceedings the first plaintiff took steps to get himself appointed trustee of the temple under the Buddhist Temporalities Ordinance, 1905, and a document was put in evidence at the trial signed by the President of the Galle District Committee, which purports to be a certificate of his appointment as trustee. The certificate on the face of it appears to show that the appointment was invalid, it being expressed to have been made by the Galle District Committee, and not by election by the majority of the voters as required by section 17 of the Ordinance. In view of the finding of the Judge that the premises are not *sanghika* property, which finding I shall subsequently refer to, and with which I am in accord, the validity of the appointment is not a matter of much moment, as I do not think that the Ordinance is intended to apply to premises that are private property. The case for the appellant is that the Sudharmalaya is *sanghika* property, and that, in the absence of proof of another form of succession attaching to the temple, the right of succession must be presumed to be in accordance with the rule of succession known as *sisyanusisya paramparawa*, and that he, as senior pupil of Seelananda of Bogahawatta, is entitled to be incumbent or *adikhari* or, alternatively, that this being *sanghika* property, the founders or trustees of the temple have no right to remove him.

The District Judge has found, and I think his finding is correct, that the premises in dispute are not *sanghika* property, and have never, in fact, been dedicated formally to the *Sangha* or priesthood.

The evidence called by the plaintiff appears to show that before property can become *sanghika* it must be formerly dedicated to the *Sangha* by a ceremony, the formalities of which are detailed in the evidence of the witness Gonagala Siddharta, Principal of Bentala Sudharmadaya Pirivena. That such a ceremony is necessary is hardly denied by the defendant's witnesses, whose evidence was mainly directed to establish that a formal dedication had been made. The Judge has found in the evidence that such dedication has not, in fact, been made, and I think the evidence justifies his finding; the gradual development of the premises into a temple appears to make it likely that no dedication to the *Sangha* was made. The conduct both of the trustees and the officiating priests up to the time of the first defendant going into residence seems to show that up to that time the property was never treated as *sanghika*, but rather as the property of the society, whose managers appointed priests at will.

The defence has not attempted to show that there has been any formal dedication in the time of the first defendant.

On behalf of the appellant, great reliance was placed on the wording of the document issued by the first plaintiff appealing for subscriptions towards the cost of the additional building to be used as a vihare.

It commences as follows :—

> " In order to enlarge or extend the viharestana called Sudharmalaya within the Fort of Galle, it is essential that the house adjoining thereto should be purchased to be dedicated to the priesthood, hence I have agreed to buy the same for a sum of Rs. 2,000, with the assistance of E. R. Gooneratne, Esq., Gate Mudaliyar of Galle, and that of several other Buddhists. Therefore, towards this meritorious act (of buying the said house) the assistance of the Buddhist public is solicited. Our Lord Buddha has preached that those who take part in the meritorious act of providing accommodation for the priesthood (*Sangha*) bring to them eternal happiness after life," &c.

The form for sending subscriptions attached to the appeal says that they are " in aid of the meritorious act of dedicating a temple to the priesthood."

It may well be that the building so acquired is held by the first plaintiff in trust for the *Sangha*, but no formal dedication having been made, the evidence in the case shows that it has not become *sanghika* property. The legal title to the building is still vested in the first plaintiff. The first defendant, having failed to show that his tutor Seelananda was incumbent of *sanghika* property, is not entitled to succeed him under the rule of pupillary succession,

and as he himself was admitted to the temple at the invitation of the legal owners of the property, he is liable to be removed by them at will.

The judgment in favour of the plaintiffs and the second defendant is, therefore, in my opinion, correct.

A point was taken on behalf of the appellant on the hearing of the appeal that was not taken in the Court below, namely, that by the rules of the society the management, and therefore the power of admitting and removing priests, was vested in the committee of the society, and not in the trustees. It is now too late to take this point. It may well be the fact that as we are informed on behalf of the plaintiffs, they are members of the original committee as well as trustees. In any case they and the second defendant are the legal owners of the premises, and therefore are entitled to possession.

I would dismiss the appeal, with costs.

DE SAMPAYO J.—

I also think that this appeal fails, and should be dismissed. With whose money and under what circumstances the original building, which subsequently developed into a vihare, was acquired is not very clear. It is certain, however, that its origin was due to the Sudharmarana Samagama, a society which was established for the promotion of Buddhism, and of which the plaintiffs and the second defendant are the surviving trustees, and that the property was purchased in the names of the trustees between the years 1890 and 1893. A dagoba and a house for the residence of a priest were added in 1908 or 1909. To make those additions an appeal was made by the trustees to the Buddhist public, but the response appears to have been poor, most of the money required being furnished by the trustees themselves, more especially by the first plaintiff, who is a gentleman of position and influence in the community. For the purpose of a certain argument on behalf of the first defendant-appellant, however, I shall assume that the original building was also acquired partly or wholly with subscriptions from the Buddhists of the place. The main question arising in this case is, whether the temple was, or at any time before this action became, *sanghika*, that is to say, belonged to the priesthood or *Sangha*, with all the incidents applicable to ecclesiastical property of that description. The contention on behalf of the appellants is that, being acquired and established at the expense of the Buddhist public for the purpose of a place of worship to be dedicated to the priesthood, it was from the beginning *sanghika*, and that the plaintiffs as trustees or otherwise have no title to it or to its possession, and cannot eject the appellant, who is one of the priesthood, the jurisdiction in that respect being vested in the local Sangha Sabawa alone, and in the last resort in the Asgiriya and Malwatta Colleges

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in Kandy. No authority has been cited from the Buddhist scriptures or from past judicial decisions in support of the proposition that a building intended to be appropriated to religious worship and built or acquired with the contributions of the faithful becomes at once *sanghika* without any further act. This appears to be opposed to principle, and is contradicted by the expert evidence given in this case. It is by a gift that a temple or any other property can become *sanghika*, and the very conception of a gift requires that there should be an offering or dedication. Accordingly, we find that the expert evidence is to the effect that until a dedication takes place the temple remains *gihi santaka* (lay property). This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests, who apparently represent the *Sarva Sangha* or entire priesthood. There is no proof of any such dedication in the present case. It was argued that after a lapse of many years a dedication could be presumed. That undoubtedly would be so in the case of a temple whose origin is lost in the dim past. But not only the origin of this temple, but every event in connection with its subsequent history, is known, and the facts are such that the presumption can have no place. The trustees continued to have complete control and management of the temple as though it was a private concern, and even appointed priests from time to time according to their will and pleasure. I think that the plaintiffs are entitled to send away the appellant, with whom they have had a serious disagreement.

If, as I find, the temple is not *sanghika*, it is hardly necessary to consider the appellant's claim that he is entitled to the incumbency of the temple by pupillary succession to the priest who preceded him, inasmuch as such a claim can only be made on the basis that the temple is *sanghika*. But as the point was strongly pressed upon us, a word may be said thereon. The principle no doubt is that unless the founders of a temple are shown to have settled a particular rule of succession to the incumbency, there is a presumption that the incumbency is governed by *sisyanusisya paramparawa* or pupillary succession. Here, again, the facts allow no room for the presumption. The first priest who resided in the temple was Gandara Seelananda, who was a priest of the Amarapura sect. He came there in 1895 at the invitation of the trustees. He left after about five years' residence. He was not succeeded by any pupil. After an interval of time one Ratanajoti resided in the temple at the invitation of the trustees. This priest was of the Siamese sect, so that there was a complete break in the order of succession. After two or two and a half years he was sent away—in other words, dismissed—on account of a disagreement with the trustees. He was not succeeded by any pupil of his own, but the trustees requested one Seelawanse, a respected and influential

priest and incumbent of Bogahawatta Temple, to select a priest, and he recommended Bogahawatta Seelananda, a pupil of his own. Seelananda also had some disagreement with the trustees, and on their complaint Seelawanse turned him out and put the first defendant-appellant in his place. This was about fifteen years ago. The appellant happens to be a pupil of Bogahawatta Seelananda, but he came in, not by virtue of that fact, but on the recommendation of Seelawanse. It will thus be seen that in the case of this temple there was no succession from pupil to pupil at any point of its short history, and that on the contrary priest came after priest by casual appointment, as occasion arose, at the instance of the trustees themselves. The accidental circumstance that the appellant was a pupil of the last priest who was so appointed does not alter the effect of the power of an appointment exercised all throughout by the trustees as the founders and, so to say, the proprietors of the temple. In my opinion the appellant's claim to the incumbency as the pupil of Bogahawatta Seelananda has no foundation.

Appeal dismissed.