[In Review.]

Present: Hutchinson C.J., Middleton and Wood Renton JJ. 1908.

MALALANKARA THERO *et al. v.* SIMANANDA THERO.

248—D. C. Tangalla, 700.

Buddhist Ecclesiastical law—Grant of temple to a priest and other priests of the Amarapura sect—Claim by pupil of grantee—Ramañña sect—Is it part of Amarapura Nikaya?

Where the incumbency of a Buddhist temple was granted by Government to a Buddhist priest and "his brother priests of the Amarapura Ordination"—

Held, that a pupil of the grantee was not disqualified from succeeding to the incumbency because he was an adherent of the Ramañña sect.

CASE heard in review preparatory to an appeal to the Privy Council.

This was an action to eject the defendant from the incumbency of the Yatala and Menik Dagobas at Tissamaharama. It appeared that Sir James Longden, Governor of Ceylon, granted by a letter dated July 4, 1882, permission to one "Jinaratana Terunnanse and his brother priests of the Amarapura Ordination to occupy the temples."

Upon the death of Jinaratana Terunnanse, the defendant, who belonged to the Ramañña sect, claimed to succeed to the incumbency as the pupil of Jinaratana and the present action was instituted to eject him.

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The judgment under review was delivered by Lascelles A.C.J., Wood Renton J. concurring:—

4th July, 1906. LASCELLES A.C.J.—

The claim in the action is to eject the defendant from the incumbency of the Yatala and Menik Dagobas at Tissamaharama in the District of Hambantota. It appears that in 1882 numerous applications were made to Government with regard to the appropriation of the ancient Buddhist Dagobas at Tissamaharama which had then been for many years in ruin and abandoned.

After personal inquiry Sir James Longden, the then Governor, granted by letter dated July 4, 1882, permission to one Jinaratana Terunnanse and his brethren priests of the Amarapura Ordination to occupy the premises now in dispute. At the same time a similar grant with regard to another Dagoba was made to another priest and his brethren priests of the Siam Ordination.

Passing over for the present the objections which have been made to the right of the plaintiffs to maintain this action, the principal point for determination is whether the defendant, who claims in pupillary succession from Jinaratana, is disqualified from succeeding to the incumbency by reason of his adherence to what is known as the Rammani Nikaya or society of Buddhists.

In this connection it is material to consider the origin of the different orders and societies of Buddhism in Ceylon. It appears that about the year 1750 A.D. the number of fully ordained priests in Ceylon was so reduced by persecution and other causes that it became necessary to bring priests from Siam, who became the founders of the Siam Samagama or orders. Some 50 years later the Amarapura Samagama was founded by the importation of the priests from Amarapura, the ancient capital of Burma.

These two principal orders of Buddhism in Ceylon have developed a tendency to subdivide into minor orders or fraternities separated from each other and from the parent order by minute distinctions of ritual and habit of life.

Thus, the Siam Samagama is divided into the Malwatta and Asgiriya Sabhas or Colleges, the former being again subdivided into the Kelaniya and Cotta fraternities. Similarly, the Amarapura Order is stated to have branched off into at least six Nikayas or fraternities, one of which is the Chula Gunthi or Rammani Sect.

The dedication by Government in 1882 was in one case to a specified priest and his brethren of the Amarapura Ordination, and in the other case to another priest and his brethren of the Siam Ordination.

Having regard to the origin of these orders of priesthood and to the language of the dedication, I cannot doubt that the Government in apportioning the ancient Shrines amongst the applicants had in view only the two main orders of Ceylonese Buddhism: the Siam Samagama deriving its orders from Siam and the Amarapura Samagama deriving its orders from Burma. The Buddhist priesthood was broadly classified with reference to the origin of its orders under these two principal heads without regard to minor sects or fraternities.

The dedication is silent as to the devolution of the incumbency after the death of the grantee for the sufficient reason that the course of succession in such cases is well settled by law.

In the absence of any provision to the contrary in the dedication of a Buddhist Temple the rule of succession is that known as Sisya-Paramparawa or pupillary succession.

Sangharatana Unnanse v. Wirasekera (6 N.L.R., p. 313). The defendant is unquestionably entitled to succeed his tutor Jinaratana in pupillary succession unless he is disqualified by being a member of the Rammani fraternity.

The Rammani Sect was introduced in comparatively recent years by a priest named Ambagahawatte. He is stated to have been originally a fully ordained priest of the Siam Samagama. However, he went to Burma on the orders of Samanéra or Novitiate of the Amarapura Samagama, there he received full orders at Ratanapanna or Mandalay from the Sanga Raja, the supreme ecclesiastical authority. Ambagahawatte appears to have visited Lower Burma and to have associated with the Chula Gunthi Nikaya, a fraternity of Lower Burmese priests leading a simpler and more austere life than the priests of Upper Burma.

On his return to Ceylon Ambagahawatte founded the Rammani Nikaya on the model of the Chula Gunthi society of Lower Burma.

Now, so far as the origin of orders is concerned, there is no real difference between the defendant and other priests of Amarapura. The source from which Ambagahawatte derived his orders, the Sanga Raja of Burma, being the same as that from which the Amarapura orders emanated. In point of fact the defendant and the 1st plaintiff in this respect are on precisely the same footing. They both received Upasampadawa from the hands of Ambagahawatte. The question then arises whether the Rammani Nikaya has so far seceded from the doctrines and observances of the Amarapura Ordination as to be excluded from a dedication in favour of the brethren of that ordination. There is no evidence of any difference on points of doctrine between the Rammani fraternity and the Amarapura Nikaya. The Rammani fraternity professed a stricter rule of life, they considered it wrong to wear silk robes, to use umbrellas, although not objecting to the Gotu-athas or talipot shade or to drive in carriages drawn by animals. There is some evidence that of recent years the tendency of the Rammani fraternity has been to keep aloof from other priests of the Amarapura Ordination and that priests of the two denominations will not perform "Vinaya-Karmas" together. The defendant himself stated that he had no objection to performing Vinaya Karmas with pious priests of the Amarapura Ordination. The matter is probably to a great extent one of personal feelings.

I am not prepared to hold that the distinction between the Ramanna fraternity and the Amarapura Nikaya is such as to disentitle a Rammani priest from the benefit of a dedication in favour of priests of the Amarapura Ordination. In doctrine and in the origin of their orders no sound distinction can be drawn between the Rammani Sect and Amarapura Nikaya. The differences in habit of life are of the character which mark a subordinate fraternity of society rather than a seceding sect, they must be found in a greater or less degree in each of the numerous Nikayas which are comprised in the Amarapura Nikaya. In this view of the case it is unnecessary to discuss the plaintiff's rights to maintain this action. We have been asked to set the judgment aside on the ground of the extraordinary delay which took place between the closing of the hearing and the delivering of judgment, while I am not prepared to accede to this course I am bound to state that I cannot for one moment accept the explanation for this delay which was given by the District Judge. Making all allowances for the difficulty of the case and the extent to which it has been obscured by the introduction of irrelevant evidence, it is not creditable to the administration of justice that the parties should have had to wait for more than a year for judgment in this case.

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I would also draw attention to the intolerable prolixity of the petition of appeal in this case. The Civil Procedure Code, section 758, requires the petition to contain a plain and concise statement of the ground of objection to the judgment. There can be no justification whatever for a petition such as that in the present case consisting of 36 paragraphs and occupying 34 type written pages of argumentative matter.

It entirely fails to save the purpose for which petitions of appeal are designed and is a mere encumbrance to the record.

For the reasons which I have given I would affirm the judgment of the District Judge and dismiss the appeal with costs.

WOOD RENTON J.—

I agree entirely. In particular I think that the presentation of such a petition of appeal, as has been before us in this case, is an abuse of the process of the Court.

March 4, 1908. HUTCHINSON C.J.—

The plaintiffs claim an injunction to prevent the defendant from officiating as incumbent of two temples at Tissamaharama and from resisting the 1st plaintiff in assuming duties as incumbent thereof and also to eject the defendant from temples and their appurtenances and to have the 1st plaintiff placed in possession thereof. The defendant claims to be incumbent of the temples and to be in lawful occupation of them and their appurtenances.

The main dispute is whether the defendant is or is not a priest of the Amarapura Ordination.

Both parties derive their title from a grant made by the Government of Ceylon contained in a letter from the Colonial Secretary dated July 4, 1882, the essential portion of which for the present purpose is this:—

"H. E. also granted to Jinaratana Terunnanse and his brethren priests of the Amarapura Ordination permission to occupy Yatala and Menik Dagobas, &c."

Upon the death of Jinaratana the defendant claimed to succeed him in the incumbency. He was Jinaratana's pupil and entitled to succeed if he is a priest of the Amarapura Ordination. He belongs to the Nikaya or sect called Ramana, but says that he is of the Amarapura Ordination. While the plaintiffs contend that the Ramana Nikaya is so wholly distinct from the Amarapura Nikaya, that a member of the former cannot be said to be of the Amarapura Ordination; the District Court found as a fact that the priests of the Ramana Nikayas are of the Amarapura Ordination. That finding was affirmed in appeal; and I think it was right. The evidence satisfies me that priests belonging to Ramana Nikaya are not of a different Ordination from other priests of the Amarapura Ordination. That the Ramana Nikaya is not a sect of Buddhists, but is rather a College or fraternity of priests who are all of the Amarapura Ordination. That is the only point which was

seriously argued by the appellants before us. I think that the judgment under review should be affirmed and that the appellants should pay the costs of the hearing.

MIDDLETON J.—

The question of fact in this case which is raised in review before us is whether the defendant who claims in pupillary succession from one Jinaratana Terunnanse is disqualified from succeeding to the incumbency of the Yatala and Menik Dagobas at Tissamaharama in the District of Hambantota by reason of his adherence to what is known as the Ramani Nikaya or sect of the Buddhist religion.

The dedication of the Government in 1882, which is accepted by both sides as valid and binding, was a grant to Jinaratana Terunnanse and his brethren priests of the Amarapura Ordination to occupy Yatala and Menik Dagobas with ten acres of Crown land. The appellants admit that there is evidence that Jinaratana belonged to the Ramani Nikaya, and the defendant also admits that he belongs to that Nikaya, but contends that it is a mere subdivision of the greater Amarapura Nikaya and not a separate Ordination.

It was contended before us that the Supreme Court in its judgment had not taken into consideration certain evidence as regards the position occupied by what is known as the Matara Nikaya, a petition marked P13, an address of the Ramani Nikaya to the Duke of York; Mr. Fowler's report and certain evidence at pages 42, 48, 85, and 92 of the record.

It was also contended that the defendant had in fact been reordained when entering the Ramani Nikaya, but the evidence on this point I think shows that he was merely proceeding from the Samanera to Upasampada Status in the Amarapura Nikaya as from the diaconate to the priesthood in the Christian churches.

As regards the other evidence relied on for the appellants and alleged not to have been considered by the Supreme Court, in my opinion it does not show that the Ramani Nikaya is a different Ordination to that of the Amarapura Nikaya, and I agree with the learned Acting Chief Justice that as far as the origin of orders is concerned there is no real difference between the defendant and other priests of the Amarapura Nikaya, the source from which Ambagahawatte derived his orders, the Sanga Raja of Burma, being the same as that from which the Amarapura orders emanated. Nor is there, as the Acting Chief Justice says, any evidence of difference of doctrine between the Ramani Nikaya and the Amarapura Nikaya.

I take leave to think that there is no greater distinction between the two so-called Nikayas than may be found between the followers of the respective high church and low church division in the

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established Church of England. The priests and ministers of these two divisions also to a certain extent keep aloof from each other, but they are bound to admit their Common Ordination.

The difference between the Ramana Sect and the Amarapura Nikaya from which the sect emanates and to which it belongs is one more of ritual and external observances than anything else, while the Ramana Sect follows and inculcates a more ascetic life.

The other point raised by the learned Counsel for the appellant, was that succession to the incumbency was not to be governed by the law of Sisiyana Sisya Paramparawa or pupillary succession but by nomination or election by the whole body of the priests to whom the endowment granted the dagobas.

The document of grant from the Government does not specify the mode in which the succession to Jinaratana Terunnanse was to be regulated, and the learned Counsel has been unable to refer us to any authority which would support his contention and the succession to the incumbency of these dagobas would be governed by any other than the well-known, and recognized principle of pupillary succession.

According to the record of the Supreme Court Minutes of the judgment in No. 366, Kurunegala, of the case of *Eriminne Unanse v. Sinabowe Unanse* dated October 21, 1833, to which I have had access on reference from page 653 of Marshall's judgments, much discussion and consultation took place as to the distinction between Sisya and Siwooro Paramparawa tenure, but it has not found room in the judgment. Siwooro Parar iparawa appears to occur when the original proprietor ordains and endows one of his lay relations who in his turn ordains another relation, &c. (*Marshall, ubi supra*).

I can find no distinct authority for holding that in default of a direction by the dedicator as to succession to the incumbency the succession must be regulated by Sisya Paramparawa.

I have no doubt, however, that the dedication document implies and intends a priestly succession and nominates an Upasampada priest and his brethren priests of the Amarapura Ordination permission to occupy the dagobas.

Jinaratana looked upon himself, as no doubt he was looked on by his brethren priests, and in fact was, as the named incumbent donee of the grant.

On the analogy of his position to that of the proprietor priest mentioned in the rules of the Malwatte priests approved of by twelve Kandyan Chiefs laid down on the January 5, 1832 (*Grenier's Reports*, 1874, page 68), I would hold in default of any authority to the contrary that Jinaratana was entitled to nominate the defendant as his pupillary successor in the incumbency and that he did so nominate him by deed No. 7,842 of January 26, 1897.

I think therefore that the appeal from the judgments under review should be dismissed with costs.

I fully concur with the Acting Chief Justice and my brother Wood Renton in their remarks in respect of the intolerable prolixity of the petition of appeal, and would hold the Proctor who has signed it personally responsible for the costs of its preparation if it be in our power to do so.

WOOD RENTON J.—

I see no reason to alter the opinion that I formed in regard to this case on the original appeal. The clear intention of the Government of Ceylon in the grants of 1882 was to apportion the ancient dagobas between the two orders of the Buddhist priesthood then existent in the Island, viz., the Siamese and the Amarapura or Burmese. The only question, therefore, is whether the respondent is within the meaning of the grant of July 4, 1882, a priest of the Amarapura Ordination. His orders are undoubtedly of Amarapura or Burmese origin and thus come, strictly speaking, within the *forma doni*, and I do not think that the evidence shows the Ramana Sect to which the respondent belongs to be anything more than a confraternity within the Amarapura priesthood living according to a stricter rule than and tending of late years to keep aloof from the rest of the body. Mr. van Langenburg admitted that he could not find in the record any proof that Ramana Ordination is treated by the Amarapura Sect as invalid except a statement by the respondent himself that on his presentation to Jinaratana Terunnanse for the Upasampadawa priesthood he was disrobed and became a layman. The witness added (Record p. 81) that the re-robing which followed was intended to cure any defect that there might have been in his Samanerahood (Record p. 79). The respondent was called as a witness by the appellants themselves. The statements just mentioned were made in a re-examination, which was really a cross-examination. There is no evidence that disrobing of which the respondent speaks is not an ordinary part of the ceremonial by which Samanera is exchanged for Upasampadawa priesthood, and the respondent stated that he did not consider that he had passed over from the Amarapura to the Ramana Nikaya by virtue of it. I cannot regard evidence of this description as counterbalancing the pointed failure of any of the appellants' witnesses to say that the Amarapura Sect hold Ramana orders to be invalid, a failure which was not *per incuriam* for the witness. Paliyagoda Dharmarama gave express evidence as to the view of the Siamese Nikaya with reference to Amarapura Orders or as discharging the burden of proof resting upon the appellants. A similar line of criticism suggests itself as to the documentary evidence on which they relied, the separate representation of the Ramana Sect in 1902 on applications connected with the Buddhist Temporalities Ordinance,

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and in the addresses presented to the Duke and Duchess of York on their visit to Ceylon in 1901 and the minutes of the various proceedings which have led up to the dispute now before the Court. This whole body of evidence is perfectly consistent—due allowance being made as regards the minutes of proceedings for the tendency of communities at arm's length from each other to exaggerate the difference between them—with the conclusion that the Ramana Sect is merely a powerful confraternity within the Amarapura Samagama. No part of it supports the view that there is any fundamental distinction between Amarapura and Ramana Ordinations. The Report of Mr. Fowler, Colonial Secretary, in favour of the Amarapura claims in 1900 (p. 12) is not binding on the respondent or on this Court and is of no probative value. The statement contained in it, that the priests of the Amarapura Sect having nothing in common with the Ramana Sect, is disproved by the oral evidence in the present case. The orders of both sects are derived from a common source. There are no doctrinal difference between them, and none of the points of disputed ceremonial would seem to touch the vital question of orders. The history of the Roman Catholic and Anglo-Catholic Churches furnishes instances of bodies of ecclesiastics within these respective communions separated by divergences quite as acute as any of these alleged to exist between the Amarapura and Ramana Nikayas, whose members would nevertheless not be held disqualified to take under a grant to priests of Roman or Anglican Ordination. On the question of the devolution of the incumbency I have nothing to add to the judgment of Lascelles C.J.

I would affirm the judgment under review with costs.

Appeal dismissed.