Present : Dalton and Lyall Grant JJ. 1928.

ATTADASSI UNNANSE *v.* REWATA UNNANSE.

344—D. C. Kurunegala, 8,665.

Extra judicial tribunal—Finding questioned in Civil Courts Grounds of interference—Buddhist law—Claim to incumbency.

A person, whose civil rights are involved, is entitled to question the finding of an extra judicial tribunal on the ground of gross irregularity or improper conduct on the part of the tribunal.

Semble, the incumbent of a Buddhist vihare is not entitled to claim compensation for improvements effected during his incumbency.

A Buddhist priest who has been expelled from the priesthood cannot claim to retain the incumbency on the ground of prescription.

THE plaintiff sought to be declared entitled to the incumbency of the Angangala vihare, and that the defendants be restrained from interfering with him in the discharge of his duties. The plaintiff stated that one Ratanapala Unnanse, the incumbent, died in 1909, and that he, as the senior pupil, succeeded him. It appears that Ratanapala had, in 1897, executed a deed appointing the 1st defendant as his successor. But plaintiff pleaded that Ratanapala was not entitled to supersede him. It was further pleaded that the defendant had been expelled from the priesthood by the Maha Sanga Sabha after inquiry into charges of immorality and misconduct brought against him. As a result, the defendant's right to the incumbency had been determined, and the plaintiff was duly appointed incumbent by the Maha Sanga Sabha.

The defendant pleaded that since his appointment in 1897 he had been sole incumbent of the vihare, and that he had acquired an exclusive right to the incumbency by prescription.

The learned District Judge held in favour of the plaintiff on all the issues.

R. L. Pereira (with *D. B. Jayatilleke*), for 1st defendant, appellant.

H. V. Perera (with *Batuwantudave* and *Wijewardene*), for plaintiff, respondent.

February 3, 1928. DALTON J.—

The plaintiff, Attadassi Unnanse, sought in this action to be declared entitled to the incumbency of the Angangala vihare, and that the defendants be restrained from excluding him from the vihare, or from interfering with him in entering upon and discharging the duties of the incumbency. He pleaded that one Ratanapala

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Unnanse, who was incumbent, died about 1909, and that he (plaintiff) was his senior pupil, the incumbency being held under the tenure known as *Sisya sisyanu parampara wa*. Ratanapala had in 1897 executed a deed (1 D3) in favour of the 1st defendant, Rewata Unnanse, but plaintiff pleaded that Ratanapala was not in Buddhist law entitled to substitute anyone as incumbent, and that on his death the incumbency devolved on him (plaintiff). Lastly, the plaint set out that, in 1920 the Maha Sanga Sabba, presided over by the Mahanayake priest of the North-Western Province, after inquiring into charges of immorality and other misconduct against the 1st defendant, Rewata in his presence, made a report to the Mahanayake and Chapter of Priests of Malwatte vihare declaring the 1st defendant " parajika " and unfit to be a member of the priesthood and expelling him therefrom. As a result any right Rewata had to the incumbency was determined, and, four months after, the Maha Sanga Sabha duly appointed plaintiff as incumbent of the vihare.

The two defendants filed one answer. Therein it was pleaded that Ratanapala died leaving no pupils, and in 1897 by deed (1 D3) he had appointed and constituted Rewata and one Serananda to the incumbency. Serananda, it is agreed, did not act and shortly after disrobed himself. Rewata pleaded that he had been sole incumbent of the vihare, which he says he had rebuilt and improved in numerous ways, since 1897 and had acquired an exclusive right to the vihare and its appurtenances by prescription. He further urged that a judgment of this Court in a previous action (D. C. Kurunegala, No. 6,454) is *res judicata* and a bar to plaintiff's claim. With respect to the inquiry into his alleged immorality and expulsion from the priesthood, Rewata merely makes a general denial. In respect of the 2nd defendant the answer merely states, that Rewata has appointed him his pupil to succeed him as incumbent of the vihare.

Some eighteen issues were framed and agreed to by both sides. Those which are material to this appeal are the following :—

(2) Does the judgment and decree in case No. 6,454 operate as *res judicata* against plaintiff ?

(9) Did the Mahanayake of Malwatte vihare declare the 1st defendant (Rewata) unfit to be a member of the priesthood and order his expulsion ?

(10) Did the Mahanayake appoint the plaintiff as incumbent of the vihare ?

(11) Is the said appointment a valid one ?

An issue was framed as to whether the Angangala vihare appertained to the Malwatte fraternity. There is a finding of the trial Judge that it did, and on this appeal Counsel for appellants (1st

and 2nd defendants) admitted that the vihare appertained to the Malwatte fraternity, and that it was held under the tenure *Sisya sisyanu* paramparawa. No issues were framed as to any rights of the 2nd defendant. The learned trial Judge found on all these issues in favour of the plaintiff and entered judgment as prayed for with costs.

With regard to the 2nd issue, in 1917 one Gurunanda Terunnanse brought the action No. 6,454 against three defendants, of whom Rewata was one and Attadassi, the present plaintiff, another. In that action Gurunanda asked for a declaration that he, the 2nd defendant, and Attadassi be declared entitled to share in the rights, privileges, and advantages of the incumbency of the Angangala vihare, and that Rewata be ejected therefrom. In reply Rewata set up the deed of 1897 which has been marked in this case (1 D3). It is obvious, however, on reference to the judgment of Bertram C.J. upon which appellants rely, that all the Court there decided was that the deed operated as a resignation of the incumbency by Ratanapala, and that thereby the incumbency became vacant. Whether or not Ratanapala could make a valid appointment of Rewata to the incumbency was not decided, it being merely held that Gurunanda at any rate had acquired no right of action. Whatever the respective rights of Rewata and Attadassi, Bertram C.J. says, the Court was not called upon to decide, and I can find no support in the judgment for the argument that the Court held that the deed appointed Rewata incumbent. The learned trial Judge's answer to this issue is in my opinion correct.

On the 9th issue there is in my opinion no difficulty, nor should there have been any difficulty at the trial. Rewata in his answer merely denied the truth of the plea that he had been found guilty of immorality and expelled from the priesthood. In view of the evidence led he was clearly unable to sustain that defence. When however evidence was led on behalf of the plaintiff to prove these facts which were pleaded, certain questions were asked in cross-examination suggesting the proceedings of the Ecclesiastical Court were irregular and so not binding upon the 1st defendant, Rewata. There was no such suggestion in his defence, nor is there any such suggestion raised in any of the issues and the learned Judge was wrong in saying that just because certain suggestions were made in the cross-examination of witnesses, it was matter which came before him for decision on the trial. Plaintiff presumably called evidence to support the case presented by him and to meet the case presented by the defence in pleadings and issues. If further issues were required by either side at any stage of the proceedings they should be duly framed, if the Court agrees it is right, so that each side may know what he has to meet. It is unnecessary to speculate as to what might have been done by the plaintiff in the way of -

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producing evidence had any amendment of the pleadings been asked for and allowed, or had any other issues been raised. The purport of pleadings and issues is to set some definite limits to the matter upon which the parties are asking the Court to adjudicate. It is difficult to think that this allegation of irregularity on the part of the ecclesiastical tribunal, which is now the main ground upon which the appeal is based, is anything but an afterthought or anything but a straw thrown out by Counsel for the defendant in cross-examination to which Rewata might clutch.. This comment is, in my opinion, fully justified when one considers the most prominent part played by this argument on the appeal, and the absence of any suggestion of the existence of any irregularity either in the pleadings or issues before the trial Judge. If the defence has raised no questions to any irregularity in the proceedings in which he was found guilty, it was presumably because he was not able to do so, and it is certainly too late to do so now.

The proceedings before the ecclesiastical tribunal were put in for the purpose of proving that the Mahanayake of Malwatte vihare had declared Rewata unfit to be a member of the priesthood and had ordered his expulsion. They show, as does also the evidence before the trial Judge, that Rewata agreed in writing to abide by the decision of the tribunal and was present all through the proceedings, cross-examining witnesses and calling evidence himself. The judgment of the tribunal was confirmed by the Maha Sanga Sabha, the order setting out the matter at length and concluding in these terms : " And as the said accused priest has committed a great many offences against the Buddhist doctrine and thereby lost all priestly rights and privileges, it is adjudged that he be debarred for ever from the rights of the priesthood and their communion and be expelled from ecclesiastical grounds, and as he has had sexual intercourse he shall lose his incumbency of Angangala vihare and be expelled therefrom and from other Buddhist vihare grounds." Rewata received notice of the verdict and of the date when judgment would be delivered, but he did not attend. He applied however in September to the Maha Sanga Sabha for a retrial. As apparently he gave no reasons to support his request, it was refused. Subsequent events, put shortly, are that thereafter application was made to have an incumbent appointed in his place, whereupon Attadassi put forward his claims and he was duly appointed by the Maha Sanga Sabha (P1). The date of this appointment is not given in the translation, but when Attadasi went to take possession of the vihare, Rewata was there and resisted him. These proceedings were thereafter taken.

The law with reference to the proceedings of extra judicial tribunals in the position of the Maha Sanga Sabha is referred to by Wood Renton J. in *Dharmarama v. Wimalaratna.*[1] He points out

[1] *5 Bal. N. C. 57.*

that Courts of law are exceedingly slow to interfere with the exercise of the jurisdiction of domestic tribunals to which each of their members has either expressly or by implication submitted himself. That jurisdiction must however not be exercised arbitrarily, but with due regard to regularity and fairness; for example, as pointed out by the Privy Council in *La Pointe v. L'Association de Bienfaisance et de Retraite dela Police de Montreal*[1] the rule expressed in such a maxim as "*audi alteram partem*" is applicable to any tribunal invested with authority to adjudicate upon matters involving civil consequences to individuals. It is open of course to an individual, if his civil rights be involved, to question the finding of any such tribunal before the Civil Courts on the ground of gross irregularity or improper conduct on the part of the tribunal, but the onus of establishing such or any other grounds he may urge is upon the person averring them. Here 1st defendant has not taken upon himself even to make any such averment. Upon satisfactory proof therefore, as here, that a tribunal which the evidence shows had jurisdiction to deal with him for an offence in Buddhist law has so dealt with him, that he has admitted the authority of that jurisdiction and has been duly heard, and that in Buddhist law certain results follow from his proved misconduct and effect has been given thereto in the judgment of the tribunal, the learned Judge, accepting that evidence, was bound to answer the 9th issue in favour of the plaintiff, and this answer concludes 1st defendant's claim to the incumbency. In reply to a question I put, Counsel for Rewata stated that the idea of a lay incumbent was foreign to Buddhist law, and that the incumbency of a vihare could not be held by any one who was no longer a priest.

Upon the 10th issue the learned trial Judge finds that the plaintiff was duly appointed the incumbent of the vihare on January 1, 1921. There is evidence to support this finding, and also to support the conclusion of the trial Judge that it was a valid appointment. In view of the answer which must be given to the 9th issue, and in the absence of any person with the right of succession under *Sisya sisyanu* paramparawa, on the authorities cited it seems to me the appointment was valid as the trial Judge finds.

In these circumstances it is not necessary to deal with any other issues. Mr. Perera has argued on behalf of the respondent that Ratanapala had no right to appoint Rewata or anyone else in place of himself as incumbent or to appoint anyone to succeed him (issue 6) as he is said to have done by the deed (1 D 3). It is not necessary for the purposes of this case to decide that point in view of the answer which must be given to issue 9. On the assumption that Rewata was entitled to claim that he had been appointed incumbent either during Ratanapala's lifetime or as from his death

[1] (*1906*) *A. C. 535.*

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in 1909, that incumbency has been determined by the order of the tribunal with which I have already dealt. No authority has been cited to us to show that Rewata is entitled to compensation for any improvements he claims to have effected during the period in which he was incumbent, whether it be *de jure* or *de facto*, and the learned Judge states there is no document to show he has effected any improvement since Ratanapala's death. On this, the 16th issue, therefore his decision must stand. On his claim also to have obtained an exclusive right to the incumbency by prescription no authority has been cited to us to show that, assuming a Buddhist priest can maintain such a claim, he can do so if he be expelled from the priesthood. It is admitted by his Counsel that the incumbency can only be held by a priest, and that in Buddhist law a priest can be deprived of, or can free himself from, the character, or status, or quality of a priest.

With respect to the 2nd defendant, all that it is necessary to say is that he claims the right of succession to Rewata by deed, said to have been executed after Rewata had been found guilty by the ecclesiastical tribunal, which deed however he does not produce. I agree with the learned Judge's conclusion as to the value of that deed.

For these reasons therefore in my opinion the appeal must be dismissed with costs.

LYALL GRANT J.—I agree.

Appeal dismissed.