1955 *Present :* **Gratiaen J. and Sansoni J.**

REV. MORAGOLLE SUMANGALA, Appellant, *and*
REV. KIRIBAMUNE PIYADASSI, Respondent

S. C. 3—D. C. Kurunegala, 6,730

Buddhist ecclesiastical law—Incumbency of temple—Sisyanusisya paramparawa—*Impostor cannot acquire right to incumbency by prescription— Prescription Ordinance (Cap. 55), s. 10*—Res judicata—*Two important principles— Privity between pupil and tutor—Admission—Weight to be attached to it— Evidence Ordinance (Cap. 11), ss. 17 (1), 18 (3) (b).*

The status of the lawful incumbent of a Buddhist temple under the *sisyanusisya paramparawa* cannot be extinguished by prescription by a *de facto* incumbent who is an impostor.

For the purpose of adjudicating upon a plea of *res judicata* raised in a dispute concerning rights to the incumbency of a Buddhist temple no privity of estate or interest can be assumed between a pupil and his tutor who is not proved to have been the lawful incumbent.

Two important tests must be applied whenever a plea of *res judicata* is raised : (1) whether the judicial decision in the earlier litigation was, or at least involved, a determination of the same question as that sought to be controverted in the later litigation in which the estoppel is raised, and, if so, (2) whether the parties to the later litigation are the parties or the privies of the parties to the earlier decision.

An admission within the meaning of sections 17 (1) and 18 (3) (*b*) of the Evidence Ordinance does not create a conclusive estoppel ; the weight to be attached to it in any particular case depends on many considerations.

APPEAL from a judgment of the District Court, Kurunegala.

H. V. Perera, Q.C., with *C. V. Ranawake*, for the plaintiff appellant.

N. E. Weerasooria, Q.C., with *Eardley Perera* and *B. S. C. Ratwatte*, for the defendant respondent.

Cur. adv. vult.

February 23, 1955. GRATIAEN J.—

The plaintiff claims a declaration in this action that he (and not the defendant) is the lawful incumbent of the Kandewela Vihara. It is common ground that the rules of succession known as the *sisyanusisya paramparawa* apply.

Certain admissions were recorded at the commencement of the trial. The plaintiff is a pupil of a Buddhist priest called Indajoti who himself had been a pupil of Waradala. The defendant is a pupil of Ratnajoti who was in fact functioning as incumbent at the time of his death.

According to the plaintiff, the original incumbent of the temple was the "Ganangamuwe High Priest" who had three pupils named Dhammarakkita, Waradala (previously referred to) and Seelawantha ; Dhammarakkita, being the senior pupil, in due course succeeded to the incumbency and he was in turn succeeded by his own pupil Sobita ;

Sobita died leaving no pupils, and the incumbency accordingly passed under the *sisyanusisya paramparawa* to Indajoti (previously referred to) and, on Indajoti's death, to the plaintiff.

The defendant does not concede the earlier stages of succession pleaded in the plaint, but it is at least common ground between the parties that Sobita had at one stage been the lawful incumbent, and that Sobita died leaving no pupils. According to the defendant, Sobita duly appointed Ratnapala (presumably a stranger to the normal line of succession) to succeed him ; the incumbency in due course passed from Ratnapala to Deela Guneratne and from Deela Guneratne to the plaintiff's tutor Ratnajoti (previously referred to) ; the defendant then succeeded to the incumbency on Ratnajoti's death. An important point for decision concerns the question as to who was entitled to succeed to the incumbency when Sobita died leaving no pupils.

There can be no doubt that the factual position was as stated by the defendant—namely, that (lawfully or otherwise) Ratnapala, Deela Guneratne and Ratnajoti had in turn functioned successively as *de facto* incumbents ; similarly, the defendant was *de facto* incumbent when this action commenced. On the other hand, it is settled law that " an impostor cannot acquire a right to an incumbency by prescription ; nor can the rights of the true incumbent be extinguished by prescription ". Although the operation of Section 10 (of the Prescription Ordinance) may in certain circumstances destroy a particular incumbent's remedy against an impostor, his right or status itself still subsists. *Kirikitta Saranankara Thero's case*[1]. This latter proposition is of course subject to the exception that a true incumbent's status may be extinguished by other modes recognised by Buddhist ecclesiastical law—for instance, by abandonment of his office. What follows in such an event calls for no solution for the purposes of the present appeal.

Several issues were framed at the trial, but, by agreement of parties, the following question of law was disposed of as a preliminary issue :—

> " 5. Is the decree in Case No. 5232 of this Court dated 27.11.14 *res judicata* between the parties in regard to the subject matter of this action ?"

This issue was answered by the learned trial judge in favour of the defendant. Accordingly, the plaintiff's action was dismissed without consideration of the other issues.

I shall now examine the scope of this earlier action No. 5232 which is claimed to have operated as *res judicata* between the parties to the present dispute. On 12th June 1914 Indajoti (i.e., the present plaintiff's tutor) had claimed a declaration that he was the true incumbent of this temple as against the person who was actually functioning in that office at the time (namely, the defendant's tutor Ratnajoti). Indajoti's action was dismissed by the District Judge of Kurunegala on 27th November 1914, and his appeal against the judgment of the lower Court was dismissed on 4th March 1915. One cannot but marvel at the admirable manner in which a complicated litigation in former times could be finally disposed of

[1] *(1954) 55 N. L. R. 313 at 315.*

(in the original Court as well as the Court of Appeal) within a period of only 9 months. The present action, by way of lamentable contrast, was instituted on 18th August 1950, and 4½ years later, this Court is only disposing of a preliminary issue of law. Having permitted myself this melancholy reflection, I return to the immediate issue before us.

The dismissal of the action manifestly precluded Indajoti at any rate from re-agitating his claim to the incumbency against Ratnajoti. But a great deal more must be established before we can accept it as a corollary that this decree also operates as *res judicata* in respect of the dispute between the present plaintiff and the present defendant.

This plea of *res judicata* would without doubt have succeeded if a decision that Ratnajoti was in truth the lawful incumbent of the temple had been implicit in the dismissal of Indajoti's action. In that event, the present defendant's claim to have succeeded to the incumbency (by reason of the " privity of estate or interest " which exists under the *sisyanusisya paramparawa* between a proved incumbent and his pupil) could not have been challenged by the plaintiff (claiming the office as Indajoti's privy). A careful examination of the judgment of Walter Pereira J. (Shaw J. concurring) dated 4th March 1915 makes it clear, however, that this Court advisedly refrained from making, even by implication, any pronouncement as to the validity of Ratnajoti's claim to the incumbency.

Two important tests must be applied whenever a plea of *res judicata* is raised (1) whether the judicial decision in the earlier litigation was, or at least involved, a determination of the same question as that sought to be controverted in the later litigation in which the estoppel was raised, and if so (2) whether the parties to the later litigation were the parties or the privies of the parties to the earlier decision. *Spencer Bower on Res judicata*, page 9.

As to the former test, let us first examine the grounds on which Indajoti sought to oust Ratnajoti from the office of incumbent in Action No. 5232 and also the grounds on which Ratnajoti challenged the validity of his claim. Finally, we must ascertain *the particular grounds on which Indajoti's claim was rejected.*

Indajoti admitted that Ratnapala did function as the incumbent of the Kandewela Vihara ; he also conceded that Ratnapala was the lawful holder of the office. Indeed, he claimed to succeed Ratnapala " as the only priest present at his death and as a co-pupil of the same tutor ". Ratnajoti, on the other hand, took up the position that the original incumbent was not Ratnapala but Deela Guneratne whom he (Ratnajoti) lawfully succeeded as sole pupil.

In the lower Court the trial judge took the view that " Indajoti's claim could not be sustained on either of the grounds he relied on no more than Ratnajoti's claim could be sustained on the grounds he relied on ". His ultimate conclusions, however, were in favour of Ratnajoti's claim on a somewhat different basis, namely :—

(1) that Sobita had been the lawful incumbent and that he had, in the absence of any pupils in the normal line of succession, *validly appointed Ratnapala as his successor ;*

(2) that upon Ratnapala's death the incumbency passed (in the absence of pupils) to Ratnapala's own tutor (somebody else named Indajoti) ;

(3) that Deela Guneratne in due course succeeded that "other Indajoti" as incumbent ; and

(4) that eventually Ratnajoti, who was Deela Guneratne's pupil, succeeded him as his "lawful successor".

If these conclusions had been the basis of the final decision in Action No. 5232, I am satisfied that the plea of *res judicata* ought to have succeeded in the present litigation. There was a categorical pronouncement that Ratnajoti was the lawful incumbent in preference to Indajoti, and the mere omission of a formal decree to that effect would not, I think, have altered the position. As to the issue of privity, the present plaintiff is Indajoti's pupil claiming as such to succeed him as his privy while the present defendant is Ratnajoti's pupil claiming the office under Ratnajoti.

But, unfortunately for the defendant, the trial judge's decision in Action No. 5232 did not constitute the final judicial pronouncement in those proceedings. The Supreme Court admittedly affirmed the decree of the lower Court, *but for entirely different reasons*. The plea of *res judicata* must therefore be considered solely by ascertaining the basis of the decision of the appellate tribunal dated 4th March 1915. The judgment of the original Court was "replaced by the appellate decision, which thenceforth holds the field". *Spencer Bower* (supra) at page 34. It was in this respect that the judgment now appealed from has erred. Too much emphasis was placed on the terms of the superseded judgment of the original Court, and little or no consideration was paid to the narrower grounds on which the decree was ultimately affirmed in appeal.

I shall now examine the judgment pronounced by this Court on 4th March 1915, in order to ascertain what precisely it did decide, either expressly or by necessary implication, in regard to the issues calling for adjudication in the present action. It at once becomes clear that the rejection of Indajoti's claim to oust Ratnajoti *did not proceed (as was the case in the superseded judgment) on a recognition of the validity of Ratnajoti's rights to the incumbency*. For instance, Walter Pereira J.'s principal judgment said :—

> "*The deed whereby Sobita instituted Ratnapala as his successor to the incumbency is of very doubtful validity, because Ratnapala was not a pupil of Sobita*, and, as pointed out in *Dhammajoti v. Sobita* [1], while an incumbent priest of a Buddhist temple may by means of a deed appoint his successor, he must confine the selection to his own pupils. *Anyway*, Indajoti could not claim to be the successor of Ratnapala because he was not a co-pupil with Ratnapala".

In the result, Indajoti's action was dismissed because, *whether or not Ratnajoti's rights of succession were valid*, Indajoti at least had failed to furnish evidence establishing that he had a right to oust an alleged trespasser. To that extent, Indajoti was of course precluded by the rule of *res judicata* from re-asserting his own rights against Ratnajoti on any ground whatsoever. But the immediate parties to the litigation are now

[1] *(1913) 16 N. L. R. 405.*

dead, and the issue as to whether the present plaintiff or the present defendant is the lawful incumbent is not embarrassed by the earlier decree. The defendant can only establish " privity in estate or interest " between himself and Ratnajoti *either* on proof that Ratnajoti was in truth the lawful incumbent *or* on production of a judicial decision (binding on the plaintiff) that he was. As I have pointed out, there is no earlier judicial decision, even by implication, to that effect. Accordingly, the plea of *res judicata* fails. For the purposes of a dispute concerning rights to the incumbency of a Buddhist temple, no privity can be assumed between a pupil and his tutor who is not proved to be the true incumbent.

Indajoti's concession in his pleadings that Ratnapala had at a certain stage lawfully succeeded to the incumbency has no bearing on the plea of *res judicata*, but it does at least constitute an " admission " within the meaning of Section 17 (1) of the Evidence Ordinance. It can therefore be proved under Section 18 (3) (*b*) against the plaintiff who claims to have derived his " interest " from Indajoti. But an " admission " does not create a conclusive estoppel ; it merely " suggests an inference " which a Court of trial may properly take into account, and the weight to be attached to it in any particular case depends on many considerations.

The true principle of *res judicata* where a decision dismissing an earlier action is relied on as creating " an estoppel by record " in subsequent litigation is thus explained by *Spencer Bower* (supra) at page 29 :—

> " The answer to this inquiry depends upon whether, on reference to the record and such other materials as may properly be resorted to, the dismissal itself is seen to have *necessarily involved* a determination on any particular issue or question of fact or law, in which case there is an adjudication on that question or issue ; if otherwise, the dismissal decides nothing, except that in fact the party has been refused the relief that he sought . . . . *Prima facie*, in the absence of materials on which such a necessary inference can be established, a dismissal is not a decision of any question of title without an express declaration of the Court ".

I have already explained why in my opinion the plea of *res judicata* fails. The judgment of Walter Pereira J. and Shaw J. decided only that Indajoti had not furnished proof entitling him to the immediate relief which he sought against his adversary. On that narrow ground, the position of Ratnajoti (whether he was the true incumbent or merely a trespasser functioning as such) could not be disturbed by Indajoti. Under Buddhist ecclesiastical law as judicially interpreted, Ratnajoti and those who claim under him could not however acquire a title to the office by mere prescriptive user. The issue as to who is now the present true incumbent is therefore at large.

I would allow the appeal and answer issue 5 in favour of the plaintiff. The record must now be returned to the lower court for a re-trial on the outstanding issues and on any other issues which may properly be raised by the parties. The plaintiff is entitled to the costs of this appeal and of the abortive trial.

SANSONI J.—I agree.

Appeal allowed.