1969 *Present :* H. N. G. Fernando, C.J., and Samerawickrame, J.

A. PUNCHIRALA, Appellant, *and* M. GNANESWARA, Respondent

S.C. 199/67 (F)—D. C. Kandy, 6936/L

Buddhist Temporalities Ordinance (Cap. 318)—Section 23—"For his exclusive personal use"—Improvements effected on pudgalika *property—Claim for compensation—Maintainability.*

Section 23 of the Buddhist Temporalities Ordinance is as follows :—

"All *pudgalika* property that is acquired by any individual *bhikkhu* for his exclusive personal use, shall, if not alienated by such *bhikkhu* during his lifetime, be deemed to be the property of the temple to which such *bhikkhu* belonged unless such property had been inherited by such *bhikkhu*."

Held, that the words "acquired for his exclusive personal use" relate to the kind of title obtained by the *bhikkhu* in the property, namely, a title for his own benefit and not for the benefit of any other person. They have no reference to the purpose for which the property is acquired, or to the manner in which the property is to be enjoyed, by the *bhikkhu* acquiring it.

Dhammadara Thero v. Sederahamy (41 N. L. R. 236) followed.

Hanwelle Piyaratana Thera v. Jinananda Thera (68 N. L. R. 178) not followed.

Held further, that a person is entitled to claim compensation for improvements effected by him on *pudgalika* property in good faith and with the consent of the owner.

APPEAL from a judgment of the District Court, Kandy.

C. R. Gunaratne, for the defendant-appellant.

N. E. Weerassoria, Q.C., with *W. S. Weerasooria*, for the plaintiff-respondent.

Cur. adv. vult.

November 20, 1969. H. N. G. FERNANDO, C.J.—

This was an action by the Viharadhipathy of a temple for a declaration of title to a land which had been purchased in 1912 by one Sumangala Unnanse who had belonged to that temple. The claim of the plaintiff was that Sumangala Unnanse died possessed of this land and it became the property of the temple by virtue of s. 23 of the Buddhist Temporalities Ordinance, Cap. 318.

The learned trial Judge upheld the claim of the plaintiff despite the judgment in the case of *Hanwelle Piyaratana Thera v. Jinananda Thera*[1]. In that case Basnayake C.J. held that a party cannot call s. 23 in aid "unless he can establish that the property was acquired by the deceased

[1] *(1963) 68 N. L. R. 178.*

for his exclusive personal use". The trial Judge has distinguished the instant case on the ground that, in the English translation of the habendum clause in the deed of 1912, the words "for his use" occur. I do not think the mere occurrence of these words in the deed satisfies the test which Basnayake C.J. thought to be applicable. According to that test, the section will not apply unless it is proved that the property was acquired for the sole use of a Bhikku and not for use by any other person whomsoever.

The judgment in the cited case does not refer to the earlier case of *Dhammadara Thero v. Sederahamy*[1], in which a similar construction of s. 20 was rejected after full and careful consideration. In this case Keuneman J. pointed out that the words "for his exclusive personal use" were probably intended only to exphasise that the section applies solely to "pudgalika" property. He further explained that—

> ". . . . . it is only a small step for us to hold that, where the Ordinance employs the phrase 'acquired for this exclusive personal use' in relationship to property, these words merely relate to the kind of title obtained by the person in the property, namely, a title for his own benefit and not for the benefit of any other person, and have no reference to the purpose for which the property is acquired, or to the manner in which the property is to be enjoyed, by the person acquiring it".

With much respect I am in entire agreement with the opinion of Keuneman J., and much prefer it to that expressed in the more recent judgment, which latter contains no discussion of the point involved. The conclusion of the learned trial Judge in the instant case has therefore to be affirmed.

The decree under appeal has allowed to the plaintiff damages for the defendant's wrongful possession of the land, but the learned Judge disallowed the defendant's claim for compensation for a house which he had erected thereon.

The defendant is the brother of the deceased Sumangala Unnanse, and it appears that he built this house on the land in 1930. This erection of a house on his brother's land, particularly because the brother was a monk, must in the absence of any evidence to the contrary be presumed to have been in good faith and with the consent of the monk.

The defendant in his evidence claimed that the house is worth about Rs. 16,000/-, but his witness Punchi Banda who has been a Vel Vidane and a member of the Cultivation Committee stated that the house is worth about Rs. 4,000/-. We think that a sum approximate to this amount can fairly be taken as the amount of the compensation for the house. There is however to be set off in favour of the plaintiff damages payable by the defendant for his wrongful occupation of the land after he was called

[1] *(1939) 41 N. L. R. 236.*

upon to deliver up possession. Allowing for this set off, and allowing also for costs in both Courts to which the plaintiff is entitled, we fix the amount due as compensation for the house at Rs. 1,000/-.

The decree under appeal is affirmed subject to the deletion of the orders for the payment of damages and costs, and to the insertion in the decree of the following orders :—

" It is hereby further ordered and decreed that the plaintiff do pay to the defendant a sum of Rs. 1,000/- in respect of compensation for the house.

And it is hereby further ordered and decreed that the defendant do pay to the plaintiff damages at the rate of Rs. 15/- per month from 1st January 1970 until peaceful possession of the premises is yielded to the plaintiff.

And it is hereby further ordered and decreed that writ of ejectment shall not issue until the sum due as compensation for the defendant is duly paid or adjusted."

SAMERAWICKRAME, J.—I agree.

Appeal mainly dismissed.