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Present : Shaw J. and Schneider A.J.

GUNARATNA UNNANSE v. DHARMANANDA.

57—D. C. Kurunegala, 7,256.

Buddhist ecclesiastical law—Sisyanusisya paramparawa — Failure of pupils in the direct line—Power of incumbent to disinherit pupils or to alter the rule of succession.

According to the *sisyanusisya paramparawa*, there is no failure in the succession so long as there remain direct pupillary successors to any previous incumbent.

Sisyanusisya paramparawa is presumed to apply in the absence of proof of the application of any other rule of succession.

THE facts appear from the judgment. The following evidence as to custom was led at the trial :—

Borukgamuwe Rewata, affirmed (called by the plaintiff):—I am the Manager of Subadarama Pirivena at Nugegoda. I am engaged in revising the *Tripitakas*. I am author and editor of books. I have been a priest for twenty-eight years.

I am conversant with the customs, &c., of the usages of the priests. (The present case is stated.)

The *paramparawa* having ended in Attadassi, the succession is in the branch through Somadatta, that is, the nearest heir. That is by the rule of *sisyanusisya paramparawa*.

Attadassi could not will away the *sanghika* property, e.g., the temple; he could the *pudgalika*.

If one pupil of two pupils of a tutor dies, the other succeeds. Where there are several pupils, unless any disqualification exists, a pupil may not in the absence of a pupil of his own will away the temple.

I am explaining the custom, which agrees with the ecclesiastical law.

Cross-examined.—Where *sisyanusisya paramparawa* exists, it does not necessarily follow the property is *sanghika*.

Pudgalika property becomes *sanghika* the moment the owner dies and there is no one to take it.

When property is gifted to the priesthood, generally that becomes *sanghika*.

I do not know how the original priest got the property in this case. I cannot say if it was *pudgalika* or *sanghika*. If the original owner gave it by documents to two persons, assuming it was *pudgalika*, it would be *pudgalika*. Their successors could deal with it as they like.

If the property was *sanghika*, and it was gifted by deed, the gift would be null, as it could not have been gifted.

Sisyanusisya means from pupil to pupil. Where there is no pupil of any branch to take, the property becomes *sanghika*, i.e., becomes the property of the *Maha Sangha*.

Either the high priest or a meeting of priests could then appoint.

It is customary that if two pupils own two temples, and one dies leaving no pupil, the other pupil owns both temples.

Pali *Mukthaka Vinaya* deals with this branch of the law (Pali *Mukthaka Vinaya*, 239). This refers only to *puḍgalika* property, and not *sanghika* property. I have not come across *palecode* in respect of *senasana*.

I know Giridere Ratnajoti. He understands Pali. By reputation he is learned. He is a friend of mine.

Re-examined.—A priest cannot will away *sanghika* property under any circumstance.

To the Court.—A priest has no right to appoint a fit person to officiate in a temple to the exclusion of his pupils if he thinks the pupils are incompetent.

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Giridere Ratnajoti, affirmed (called by the defendant):—I am Principal of Doronogoda Pirivena. I am a member of the Council of Oriental Studies. I have considerable experience in teaching our own *dhamma* for many years.

If one priest owned two temples and appointed his two pupils to the two temples in *sisyānusisya paramparawa* on a failure of one line, then the temple in question becomes *sanghika*, it does not go to the other branch. I have authority for that statement.

I have here the Pali *Mukthaka Vinaya Tikawa*, the book in which are the rules for the guidance of the priesthood.

It says hereunder (ᨣ): “If the incumbent priest is old and infirm, or sick, or wishes to take rest, and if he wishes to give over the temple to another person, or if he anticipates disputes and lawsuits after his death and wishes to avoid such, or if he wishes to give the temple to a person who associates with him, he should not gift it himself alone, but should collect the priests and inform them, and considerable assistance given by some person or by reason of special qualifications of the recipient, such a person should be selected (looked for).”

The priests should avoid four prejudices and then make the appointment. They must consider the rules at the time as set down by Buddha in the *Vjñaya*.

The appointment should be made to a well-disciplined, well-conducted priest.

This is how appointment is made on failure of succession.

I support the present defendant's appointment, as it is in accordance with what I have read first.

The statement which I have first read and translated can be supported with further authority.

“*Parikkari*” includes immovable property. It is given in the Pali *Mukthaka Vinaya* at pages 275 to 282. Here is a description of the valuable property in regard to *parikkari*. The same word applies both to movables and immovables.

Cross-examined.—“*Garu*” applies to movables also.

The preaching of Buddha is in Pali. The *Atuvawa* is the commentary. *Tikawa* is a commentary on the commentary. I read from the *Tikawa*, which comments on Buddha's sayings.

In time of Buddha priests had temples and property. *Sisyānusisya paramparawa* did not exist in the time of Buddha. That was a subsequent innovation arising when kings gave property in *sanghika*.

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The resident priest is merely in charge of a temple from the *Sangha*. Such temples under the *sisyanusisya paramparawa* went down from pupil to pupil. The system is not analogous to descent in the civil law.

According to the original rules, on the death of a priest the temple becomes *sanghika* every time.

It is only the *Sangha* that can appoint to the *sanghika* property. If a priest appoint a successor, he must appoint with the approval of a *Sangaha Sabawa*.

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A. St. V. Jayawardene, F. de Zojsa, E. T. de Silva, and Jayawickreme, for the appellant.

H. J. C. Pereira (with him *Batuwantudawa*), for the respondent.

Cur. adv. vult.

January 26, 1921. SHAW J.—

The plaintiff claims a declaration that he is entitled to the incumbencies of the Mudunna and Tammita Vihares on the ground that the succession is governed by the *sisyanusisya paramparawa*, and that he is the next priest in the line of succession.

No dispute arises as to his right of succession to the Tammita Vihare, but the defendant claims that he is entitled to the incumbency of Mudunna Vihare by reason of his appointment to the succession by the late incumbent, Attadassi, who died leaving no pupil, which appointment was confirmed by the Mahanayaka of Asgiriya.

The evidence does not disclose the origin and early history of these vihares, but in the year 1847 one Gantampola Dharmajoti was incumbent of both vihares, he having succeeded his tutor Rakkita Unnanse, who had himself succeeded his tutor Suwannajoti. The evidence seems to establish that the succession to the vihares is governed by the *sisyanusisya paramparawa*, and, indeed, this rule of succession must be presumed to apply in the absence of proof of the application of any other rule of succession. *Ratnapala Unnanse v. Kiwitigale Unnanse*.¹

Gantampola Dharmajoti had two pupils, Somadatta and Gunaratne, and during his lifetime, in the year 1847, he, by *talpota* (P 2), assigned the incumbency of Tammita to Somadatta.

The material part of the document is as follows: "But at present being invalided and my ailments becoming very serious, I have assigned over and granted the aforesaid temple and the premises at Tammita and everything appertaining thereto unto my pupil Kossawa Somadatta, whom I have from his young days adopted and ordained as a priest, so that he may hold and possess the same independently," &c.

¹ (1879) 2 S. C. C. 26.

After the assignment Somadatta appears to have resided at Tammita, and after the death of Gantampola Dharmajoti he continued to do so, paying, however, frequent visits to Mudunna. The other pupil, Gunaratna, continued to reside at Mudunna. The District Judge has come to the conclusion that Gunaratna was the senior pupil of Gantampola Dharmajoti, and as such succeeded to the vihare of Mudunna. In this view I think he is clearly wrong. In the year 1855 disputes arose between the priests at the two vihares, and the then Mananayaka of Asgiriya Vihare held an inquiry and made an award (P 3), in which it is stated that: "It was decided in consideration of the said Kossawa (Somadatta) of Tammita being a senior priest of all other priests, and also in view of the fact that the deceased Gantampola priest had entrusted and delivered the said temples and premises and the pupils thereof to the said Kossawa, that the said Kossawa as a chief and elderly priest continue as such in the usual customary manner which has prevailed before in the aforesaid two temples and premises . . . and further to adhere to the usual customary tutelary succession for generations to come uninterruptedly."

The document appears to me to show clearly that Kossawa Somadatta was the senior pupil, and that he, and not Gunaratna, succeeded to the incumbency of Mudunna.

Somadatta had a pupil, Gantampola Dewarakkita, who resided at Tammita, and succeeded his tutor there. On his death he was succeeded by his pupil, the plaintiff.

Gunaratna, after Somadatta's death, continued to reside at Mudunna, and, whatever his legal rights were, he appears to have become recognized as incumbent, and on his death his pupil Attadassi succeeded him in the incumbency of Mudunna. Whatever their legal rights were, it is probable that these priests acquired a presumptive right to the Mudunna Vihare. Attadassi died shortly before this action was instituted leaving no pupil. Some years before his death he convened a meeting of priests at Mudunna and purported to appoint the defendant, who was a relation of his, as his successor to the Mudunna Vihare. This appointment has been confirmed by the Mahanayaka of Asgiriya. The District Judge has held that the document (P 2), to which I have previously referred, effected a severance of the two vihares and that a new line of succession then began, and that the plaintiff is not entitled to succeed to the Mudunna Vihare on the failure of the direct pupillary heirs to that vihare.

In my opinion it is impossible to support this finding. It was clearly not within the power of Gantampola Dharmajoti to alter the rule of succession attaching to these vihares or to disinherit his pupils. Neither does the document in any way purport to do so. In fact, he did not do so. As I have pointed out, it is clear from the

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document (P 3) that Somadatta as his senior pupil succeeded him to the Mudunna Vihare.

The argument urged on behalf of the defendant at the hearing of the appeal was that although the succession to the Mudunna Vihare is to be governed by the *sisyanusisya paramparawa*, the direct line of pupils having failed by the death of Attadasai without pupils, the vihare became the property of the *Sangha* as a whole, and the right of appointment of an incumbent vested in the college of priests or the Mahanayaka, and did not revert to the collateral line of priests descending from a previous incumbent.

So far as the evidence as to custom which has been given in the case is concerned, it appears to me to be clearly in favour of the plaintiff's claim to succeed. The witness Giridere Ratnajoti, Principal of Derenigoda Pirivena, called on behalf of the defendant, who expressed an opinion contrary to the plaintiff's right to succeed, appeared to base his opinion on the Pali *Mukthaka Vinaya*, and to disregard the Ceylon custom of *sisyanusisya paramparawa*; and Ambagaswewa Ratnajoti, High Priest of Asgiriya, also called for the defence, stated in his evidence: "If pupils of the same tutor manage different temples and one of the lines fail, the temple goes to members of the other branch."

This appears to give away entirely the case for the defendant. The right to the collateral line to succeed has been recognized by this Court in several cases.

In *Weligama Dhammajoti Unnanse v. Weligama Saranande Unnanse*¹ Dias J. says: "I have always understood the rule to be that after exhausting the descending line you must resort to the ascending line, such as the tutor of the deceased incumbent, and failing him the fellow-pupils of the deceased incumbent."

In *Sumana Terunnanse v. Randappuhamy*² Lawrie C.J. says: "The descent is from a founder or original grantee, and the line of his succession is not exhausted so long as there are persons alive who descend in the pupillary line from him."

In *Sobita Terunnanse v. Sidatte Terunnanse*³ it was taken as admitted that when a priest died leaving no pupils of his own, then the pupils, direct or more remote, of the tutor of the deceased priest would be entitled to succeed.

In the recent case *Saranankara Unnanse v. Indajoti Unnanse*⁴ the right of pupils in the collateral line to succeed on failure of the direct line was recognized in the judgment and decree in the case, although there was no decision on the point that is raised in the present case. As I understand the rules of *sisyanusisya paramparawa*, there is no failure in the succession so long as there remain direct pupillary successors to any previous incumbent.

¹ (1881) 5 S. C. C. 8.² (1893) 3 C. L. R. 14.³ (1867) Ram. 1863 1868, 280.⁴ (1918) 20 N. L. R. 385.

The plaintiff being the direct pupillary successor to Somadatta and Gantampola, he is, in my opinion, entitled to succeed to the incumbencies of both temples.

I would accordingly set aside the judgment appealed from, and direct judgment to be entered for the plaintiff as prayed for, with costs.

The appellant is entitled to the costs of this appeal.

SCHNEIDER A.J.—I agree.

Set aside.

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