

1967      *Present : Manicavasagar, J., and Samerawickrame, J.*

**T. R. CHARLIS APPU KAPURALA and another, Appellants  
and A. MANIS APPU, Respondent**

*S. C. 274/64—D. C. Badulla, 2163/M*

*Buddhist ecclesiastical law—Trustee of a temple—Suit against him in his personal capacity—Substitution of party in case of his death pending action—Civil Procedure Code, s. 404—Buddhist Temporalities Ordinance, s. 18.*

Plaintiff sued the 1st defendant and the Basnayake Nilame of the Katara-gama Devale (2nd defendant) for damages for wrongfully preventing him from exercising his right to officiate as Maha Kapurala of the Ruhunu Maha Katara-gama Devale during the month of Esala, 1961. The action was framed against the 2nd defendant personally and not in his official capacity as Basnayake Nilame. Pending the action the 2nd defendant died and the added defendant, who was successor to the deceased in the office of Basnayake Nilame, was substituted in his place.

*Held*, that the substitution of the added defendant in place of the deceased 2nd defendant was bad because the action as originally framed was against the 2nd defendant personally and not in his official capacity as Basnayake Nilamo.

**A**PPEAL from a judgment of the District Court, Badulla.

*H. W. Jayewardene, Q.C.*, with *C. R. Gunaratne, A. H. E. Molamure* and *L. C. Sencviratne*, for the 1st defendant-appellant and substituted defendant-appellant.

*C. D. S. Siriwardena*, with *B. Bodinagoda* and *Miss S. Lenaduwa*, for the plaintiff-respondent.

*Cur. adv. vult.*

February 21, 1967. SAMERAWICKRAME, J.—

The plaintiff-respondent instituted this action against the 1st defendant-appellant and one W. A. Ratwatte. In his plaint dated 28th June, 1961, he averred that he was the present holder of the hereditary office of Maha Kapurula of the Ruhunu Maha Kataragama Devale, Kataragama, and that as Maha Kapurula he was entitled to the possession of the "etul kattala" or "devale" and to appoint Mas Kapuralas for a period of a month to officiate at the said Devale. He also stated that as Maha Kapurula, he was entitled to officiate during the month of Esala commencing on the 13th day of July, 1961 and ending on the 12th August, 1961. He alleged that he had appointed the 1st Defendant to officiate at the Devale but that on the expiry of his term, the 1st Defendant had failed to hand over possession of the Devale and to surrender the key to him. He alleged that the 1st Defendant had so acted on the instructions of the 2nd Defendant and that the two defendants were acting in collusion in order to prevent him from exercising his right to function during the festival month of Esala. He prayed for a declaration that as Maha Kapurula he was entitled to the possession of the said Devale at all times and to supervise functions of the "etul kattala" and the right to carry out the daily ritual of the Devale from the 13th July, 1961, until the 12th August, 1961 and to collect the "arichchinam" offerings during the said period, and also for damages in a sum of Rs. 50/- per day for the loss of "arichchinam" offerings from the 13th July, 1961 until he was restored to possession. The defendants filed answer denying that the plaintiff held hereditary office of Maha Kapurula or that he was entitled to the possession of the Devale or to appoint Mas Kapuralas.

During the course of the trial, W. A. Ratwatte died and the plaintiff asked for and obtained substitution in the first instance of a legal representative in his place, but later he made an application to Court stating that the earlier order of substitution should be vacated and that the present 2nd Defendant, who is the successor to W. A. Ratwatte in

the office of Basnayake Nilame of the Kataragam Devale should be substituted in his place on the footing that there had been a devolution of interest within the meaning of Section 404 of the Civil Procedure Code. Though the 1st Defendant and the substituted 2nd Defendant resisted his application, the Court made order substituting S. L. Ratwatte, Basnayake Nilame of the Ruhunu Maha Kataragam Devale in place of the original 2nd Defendant.

After trial, the learned District Judge held that the plaintiff was not the holder of the hereditary office of Maha Kapurala nor entitled to possession of the Devale nor to a right to appoint Mas Kapuralas, but he held that there was such an office as Maha Kapurala which the plaintiff-respondent held and that as Maha Kapurala he was entitled to officiate at the Devale during the month of Esala and Il. He further held that the claim for damages was premature in that the plaint had been filed on the 28th June, 1961 and the plaintiff's right to officiate did not arise until the 13th July.

In appeal, Mr. H. W. Jayewardene, Q.C., appearing for the defendants-appellants submitted —

- (1) that the action was premature and that no cause of action had accrued in favour of the plaintiff-respondent at the date of its institution :
- (2) that the substitution of the present holder of Basnayake Nilame of the Ruhunu Maha Kataragam Devale in place of the original 2nd defendant was bad as the claim in the action was one for which the original 2nd Defendant was personally liable :
- (3) that the relief granted by the District Judge was not relief sought for by the plaintiff-respondent in his plaint and should not have been ordered.

Mr. Jayewardene further raised a plea of *res judicata* and submitted that the decision in a connected case, S. C. 202/61 (F) D.C. Badulla 13686, was conclusive between the parties on the matters in issue in this action. Final judgment in that action had been delivered by this Court on the 8th October, 1966 after the petition of appeal in the instant case had been filed. In support of his plea, Mr. Jayewardene produced and marked the following documents :—

- X1—Petition of appeal in S.C. 202/61 (F) D.C. Badulla 13686.
- X2—Statement of cross-objections of added defendant.
- X3—Statement of cross-objections of Plaintiff-respondent.
- X4—2nd statement of cross-objections of plaintiff-respondent.
- X5—S.C. Minutes of 29.6.65
- X6—Judgments of the Supreme Court.

The plaint and the issues in that case had been produced and marked during the course of the trial.

It would be convenient to deal first with the point that the substitution of the added defendant was bad because the action as originally framed was against the late W. A. Ratwatte personally and not in his capacity as Basnayake Nilame. Mr. Jayewardene submitted that the liability of a trustee in respect of a contract or tort is personal and the question whether he is entitled to indemnity from trust funds must be decided by a Court in other proceedings than that in which the action was brought. The plaint in this case contains a claim for damages in respect of wrongful acts alleged to have been committed by the defendants in collusion and the declaration prayed for is in respect of the right of the plaintiff which had been denied and/or derogated from by the said acts of the defendants. Mr. C. D. S. Siriwardena, who appeared for the plaintiff-respondent, stated that there might be some force in Mr. Jayewardene's contention if the matter concerned an ordinary trustee. He pointed, however, to Section 18 of the Buddhist Temporalities Ordinance and submitted that the effect of that section was to render a trustee of a Buddhist temple or devale a quasi corporation sole, and that therefore, upon the death of a trustee the proper person to be substituted was his successor in office.

To consider this contention, it is necessary to find whether this action was framed against Mr. Ratwatte as a trustee or against him personally. In the caption of the plaint, the 2nd Defendant is stated to be "Wilfred A. Ratwatte of Samarakoon Walauwa, Badulla, and Basnayake Nilame of the Ruhunu Maha Kataragama Devale". Nowhere in the plaint is it stated that he is being sued in his capacity as Basnayake Nilame. The fact that he is Basnayake Nilame is set out in paragraph 4 of the plaint. When one considers the terms of paragraph 4, it would appear that that fact is set out in order to show that as Basnayake Nilame he was in charge of the affairs of the Devale other than those pertaining to the "etul kattala" or "devale" proper. Paragraph 4 reads as follows:— "The second defendant is the Basnayake Nilame in charge of the temporal affairs of the Dewala and is the Head of the Pita Kattala or the officers serving outside the Dewala and as such has nothing to do with religious rites in the Dewala or the Etul Kattala". It appears to me also that the reference to his being Basnayake Nilame in the caption to the plaint is merely descriptive. Accordingly, the plaint, on the face of it, appears to have been framed against Mr. Ratwatte personally.

Having regard to the claim for damages made in the plaint against the defendants, it would appear to me that it could not have been the intention of the plaintiff to sue Mr. Ratwatte in his official capacity so as to make funds of the Devale liable in respect of his claim. It appears that the claim made in the action is one in respect of which Mr. Ratwatte was liable personally. In fact it may well be that Mr. Ratwatte could have been sued in his official capacity as Basnayake Nilame only

in an action in which title to the property of the Devale was involved and he was called upon to be a party to the action as the legal holder of that title. Certainly, he could not have been sued in his official capacity in respect of wrongful acts alleged to have been done by him.

But even if this was an action that had been framed against Mr. Ratwatte as trustee, I do not think that Mr. Siriwardena's contention that Section 18 of the Buddhist Temporalities Ordinance has the effect of making a trustee of a Buddhist temple or devale a quasi corporation sole is correct. This matter has been considered in the case of *Hayley v. Nugawela*<sup>1</sup>. At page 167, L. M. D. de Silva A.J., in considering Section 30 of the Buddhist Temporalities Ordinance No. 8 of 1905, which is the same as Section 18 of the present Ordinance, stated, "The question was considered whether this section and the Ordinance as a whole made the trustees a corporation with power to contract as such. If it does, then the property of the corporation and not the property of the persons constituting it would be liable in execution when trustees enter into a transaction in a corporate capacity. In the first place, it is to be noted there is no express provision such as is to be found in the Societies Ordinance, 1891 (Section 9 (1)), the Co-operative Societies Ordinance, 1921 (Section 17), the Nuwara Eliya Board of Improvement (Amendment) Ordinance, 1924 (Section 4) and a number of other Ordinances making the trustees a corporation. Such provision is not absolutely essential so long as the intention to create a corporation is evident from the Ordinance (8 Halsbury p. 320). Is such an intention evident? Section 17 of the Ordinance provides for the election of "one or three trustees" for every temple. If trustees so appointed are a corporation, then they are a corporation aggregate and 'can as a general rule only act or express its will by deed under its common seal' (8 Halsbury p. 309), but the Ordinance does not provide for such action. No seal is provided. The non-existence of a seal in the case of a body alleged to be a corporation, though not conclusive is cogent evidence against incorporation (8 Halsbury p. 309). Then again, if the trustees are to be regarded as a corporation the only properties possessed by it would be the temporalities. The view that the trustee is a corporation would therefore take away from the temporalities the protection ordinarily afforded by law to trust property, namely, that the right of a creditor of a trustee against trust property is no higher than that of the trustee. The corporation could incur a debt and the temporalities could be made liable without the interposition of an inquiry by Court as to whether or not the debt was properly incurred on behalf of the trust estate. I do not think the legislature can be presumed to have taken away this protection from the Buddhist temporalities when, as it appears from the Ordinance, it has not done so by express provision".

This judgment is in point and I think it should be followed. Mr. Siriwardena cited the case of *Knight and Searle v. Dove and others*,<sup>2</sup> in which it was held that a Trustee Savings Bank could be sued in its

<sup>1</sup> (1933) 35 N. L. R. 157.

<sup>2</sup> (1964) 2 A. E. R. 307.

own name for damages for wrongful conversion of the proceeds of certain cheques though the Bank was neither made a corporation by the Statute which created it nor made liable to be sued in its own name. That decision appears to have gone on the basis of the circumstances relating to the business carried on by the Trustee Savings Bank and is entirely different on the facts to the matter before us.

It is significant that in *Hayley v. Nugawela*, the defendant was sued as trustee and decree was entered against him as trustee, yet it was held that he was personally liable as the action was on a contract. I, therefore, hold that the action originally instituted by the plaintiff was one upon which W. A. Ratwatte could have been made personally liable only and that the added defendant, who is the holder of office of Basnayake Nilame, should not have been substituted in his place and should not have been called upon to answer for the wrongful acts alleged to have been committed by the said W. A. Ratwatte. I think that the appeal of the added defendant-appellant must be allowed and the action against him dismissed.

On the findings made by the learned District Judge, I am also of the view that in any event no cause of action had arisen in favour of the plaintiff at the time he came into Court. The only wrongful acts alleged by him against the defendants are that the 1st defendant failed to give up to the plaintiff the key of the devale and to surrender to him possession of the "Etul Kattala" or "devale" at the conclusion of his month of office and that he was continuing in wrongful possession of the devale and that these acts were done by him in collusion with the 2nd defendant. The learned Judge has held that the plaintiff was not entitled to possession of the "Etul Kattala" or "Devale" nor to have the key of the "Etul Kattala" or "devale" handed to him. The plaintiff was only entitled to possession of the devale at the commencement of the month of Esala on the 13th July, 1961. As the action was filed on the 28th June, 1961, it cannot be said that the defendants had in any way infringed upon the rights of the plaintiff at the date that he instituted action. Accordingly, no cause of action had arisen in favour of the plaintiff at that date and his action was premature.

In view of the findings arrived at, it is unnecessary to consider the other points raised by counsel for the defendants-appellants. It is also unnecessary to consider the cross-objections filed by the plaintiff-respondent in which he sought to have the order made by the learned Judge varied by declaration that he held the hereditary office of Maha Kapurala and that as holder of office, he had a right to nominate his successor and further the office of Maha Kapurala is hereditary in his family.

I would allow the appeal and set aside the judgment of the learned District Judge and direct that plaintiff's action be dismissed. The defendants-appellants will be entitled to costs of appeal, and costs in the original Court. The cross-objections of the plaintiff-respondent are dismissed, but without costs.

MANICAVASAGAR, J.—I agree.

*Appeal allowed.*

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