1964 *Present :* **Sirimane, J., and Manicavasagar, J.**

U. DHEERANANDA THERO, Appellant, *and* D. RATNASARA THERO, Respondent

S. C. 622/60—D. C. Anuradhapura, 5369

Buddhist ecclesiastical law—Action for declaration of title to incumbency of a temple—Prescription—Abandonment of incumbency—Requirement of clear evidence of intention—Pupilage—Proof.

The claim of a plaintiff to be declared that he is the Viharadhipathi of a Buddhist temple is an action for declaration to a status and is, therefore, barred unless it is brought within three years of the accrual of the cause of action.

During the pendency of action No. 3760 for declaration of title to the incumbency of a Buddhist temple the defendant died and his pupil was substituted as defendant. Judgment was given by the District Court in favour of the plaintiff. Pending the appeal filed by the defendant, the plaintiff sought execution of that part of the decree which was executable, and the defendant left the temple in obedience to the decree. Subsequently the defendant succeeded in the appeal and got himself placed in the temple premises again on the 19th February 1958. Thereafter the plaintiff brought the present action against the same defendant, claiming title to the incumbency. It was his case that his present cause of action arose only on the 19th February 1958.

Held, that the running of prescription in favour of the defendant was not arrested merely because he had left the temple in obedience to the decree of Court in action No. 3760. It is the duty of the Courts to see that no party is placed at a disadvantage by an act of Court.

Held further, (i) that the incumbency of a temple cannot be held to have been abandoned by the Viharadhipathi unless the proof of his intention to renounce his rights is clear and unambiguous.

(ii) that there was sufficient evidence in the present case that the plaintiff was a pupil of his tutor.

APPEAL from a judgment of the District Court, Anuradhapura.

H. W. Jayewardene, Q.C., with *V. Jonklaas* and *L. C. Seneviratne*, for defendant-appellant.

H. V. Perera, Q.C., with *T. B. Dissanayake* and *D. C. Amerasinghe*, for plaintiff-respondent.

Cur. adv. vult.

December 21, 1964. SIRIMANE, J.—

The plaintiff-respondent (hereinafter called the respondent) filed this action against the defendant-appellant (hereinafter called the appellant) on 14.7.58 for a declaration that he (respondent) was the Viharadhipathi of the temple known as Panikkankulama *alias* Manikkankulama Purana Raja Maha Vihare described in the schedule to the plaint. He also prayed that the appellant be ejected from the temple.

It was common ground that Rev. Sidhartha was the Viharadhipathi of four temples of which the temple in dispute was one. He had two pupils Ratnapala and Piyadassi. By agreement there was a division of incumbencies between these two pupils, and admittedly Piyadassi became the Viharadhipathi of the temple in dispute. The respondent claimed the incumbency as a pupil of Piyadassi, who had two other pupils, Daswatte Gunaratne, who disrobed in 1938 and died in 1942, and Ratnasara, who disrobed in 1939. It is also relevant to note that Ratnapala, the co-pupil of Piyadassi mentioned above, had three pupils Sumangala (who in turn had three pupils Seelananda, Gunaratna and another), Sumanatissa, who left no pupils, and Piyaratana, whose pupil is the appellant.

The appellant resisted the respondent's claim on three grounds, which, in the order they were urged at the hearing of this appeal were—

(i) that the respondent's claim, if any, against the appellant was prescribed in law ;

(ii) that Piyadassi abandoned the incumbency of this temple so that his pupils (assuming that respondent was his pupil) could not claim through him ; and

(iii) that the respondent had failed to prove that he was in fact a pupil of Piyadassi.

The learned District Judge has found in favour of the respondent on all three points.

To deal with the question of prescription. It is conceded that a claim of this nature has to be brought into Court within three years of the cause of action arising. Piyadassi (the admitted Viharadhipathi) died on 22.2.52. So that the respondent's right to claim the Viharadhipathiship against the then disputant (Piyaratane) arose on that day. He filed District Court, Anuradhapura, case No. 3760 against Piyaratane on 18.5.53 praying for a declaration as Viharadhipathi of this temple, and the ejectment of Piyaratane from its premises. Piyaratane died on 31.1.54 during the pendency of that action. The right to sue the appellant, who was also disputing his claims arose on that day : and prescription started running against the respondent as from that day. It is true that the appellant could never have acquired a " right " to the incumbency by the mere efflux of time, but I do not think that that fact affects the position of the respondent who had to bring his claim properly before a Court of Law within three years of 31.1.54.

The respondent did not file action ; instead he moved to substitute the appellant in the room of the deceased, Piyaratane, in D. C. 3760. The appellant consented to the substitution, and continued the dispute. A Divisional Bench of this Court has held that the respondent's right to

sue did not survive against the appellant. (See *Dheerananda Thero v. Ratnasara Thero.*)[1] So that the cause of action against the appellant which arose on 31.1.54 was properly brought before Court only when the present action was filed, namely on 14.7.58—well after the period of three years had elapsed.

Now, D. C. 3760 was decided in favour of the respondent in the District Court. The decree is really in two parts, (*a*) a declaration that respondent was the incumbent, (*b*) an order for ejectment against the appellant on the ground that he was disobedient and disrespectful. (Ordinarily, being a priest he would have had a right of residence in the temple even though he claimed the Viharadhipathiship himself.) *But the decree did not end the dispute,* for the appellant appealed against it. Pending the appeal the respondent sought execution of that part of the decree which was executable, and the appellant left the temple in obedience to the decree. But he continued to dispute the *entirety* of the defendant's claim by prosecuting his appeal, and as soon as he succeeded got himself placed in the temple premises again on 19.2.58. It is the respondent's case that his present cause of action arose only on that day, and it was argued on his behalf that when the appellant left the temple he (respondent) regained " his right, and the full enjoyment thereof ", and that his cause of action against the appellant was extinguished. I have carefully considered this argument but I do not think that it is tenable. The respondent's cause of action was the denial of his right as Viharadhipathi to exercise control, not only over the temple premises but over all its temporalities. (See para. 10 of the plaint.) There is the respondent's evidence that there are fields and highlands belonging to this temple. The mere fact that the appellant left the temple premises did not restore to the respondent the " full enjoyment of his rights ". The denial of his rights continued, and, in my view, the running of prescription was not arrested merely because the appellant left the temple in obedience to a decree of Court. If the respondent's argument is to be accepted, the appellant, in order to conserve an advantage he had gained, should have resisted the decree before it was set aside in appeal. I think it is the duty of the Courts to see that no party is placed at a disadvantage by an act of Court (see *Jai Berham and others v. Marwari and others*)[2]. I am of the view that the appellant is entitled to succeed on the plea of prescription.

In view of this finding in favour of the appellant, it is unnecessary to decide the two other grounds urged on his behalf; but, since these two grounds were also fully argued before us I would like to state my views. I am of opinion that the appellant must fail on both these grounds.

To deal with the question of abandonment. The basis of abandonment is the intention to renounce one's rights; and this intention must be clear and unambiguous. If there is any doubt on this matter the

[1] *(1958) 60 N. L. R. 7.* [2] *1922 A. I. R. Privy Council 269.*

inference drawn must be against an abandonment. (See *Jinaratane Thero v. Dharmaratana Thero*[1].) The appellant relied very strongly on certain documents ; e.g. P20, D16, D15 and in particular the Notarial Deed P(*b*) which was later referred to in D7.

In 1933 Piyadassi went to reside in a temple at Aluwihare in the Matale District (the temple in dispute is in the District of Anuradhapura) and before he left he obtained the writing P20 dated 8.9.33 from his pupil Dawatte Gunaratana. On the face of it P20 is an agreement by which Gunaratana promises to " safeguard " certain properties and to return them to Piyadassi " on his demand ". The translation reads, " Movable, immovable *and* personal properties ". It was pointed out by learned Counsel for the appellant that the word " and " does not appear in the original, but I do not think that the learned District Judge was misled thereby. The document entrusts the movable, immovable, personal property to Gunaratana (some of the movable property is enumerated in the document itself) to be looked after and handed back on demand to Piyadassi. One could hardly infer an abandonment from such a writing.

D16 is a letter written by Piyadassi to Gunaratana from Aluwihare about a month after P20, on matters not relevant to this case, in which Piyadassi describes himself as resident priest (Viharadivasi) of Aluwihare, but also as " Piyadassi Thero of Sandagalpaya, Manikkankulama " (that is the temple in question). It shows that Piyadassi was at that time living at Aluwihare, but it does not indicate that he had abandoned this temple.

D15 is a writing granted by Gunaratana (who had agreed to safeguard Piyadassi's property by P20) to Piyaratana by which he purports to transfer to Piyaratana all his right, title and interest in this temple which he inherited from Piyadassi. Piyadassi was still alive at that time but the most important fact about this document is that Piyadassi was not a party to it, and D15 is therefore of very little value as an indication of any intention on the part of Piyadassi to abandon this temple. P(*b*) is a deed in English, notarially executed, in 1936. It follows the general form adopted in conveyances of immovable property.

According to its terms Piyadassi, who describes himself as " Incumbent Priest " of this temple, appoints Seelananda Thero (referred to earlier) as the Incumbent and empowers him " To take, receive and collect rents, profits and advantages . . . . belonging to the said Vihare. . . . " It goes on to say, " I delegate unto him the full management and control of the said Vihare absolutely and for over ". It was argued for the appellant that the deed shows a clear indication on Piyadassi's part to abandon his rights.

One must bear in mind the distinction between abandonment or renunciation of one's rights, and a conveyance of those rights to another. When rights are abandoned they disappear, and cease to exist, and there

[1] (*1955*) *57 N. L. R. 372.*

is no person to whom those rights accrue. In the case of a conveyance the transferor asserts his rights, and then transmits them to the transferee so that the rights continue in the transferee. It may turn out that the act of transfer is ineffective (as in this case) but then the rights of the transferor do not disappear (for he never renounced them) but continue to remain in him.

Seelananda, as stated earlier, is the pupil of Sumangala who was the eldest pupil of Ratnapala, the co-pupil of Piyadassi. It was admitted that succession to the temple was governed by the rule of Sisyanu Sisya Paramparawa and since Seelananda was not a pupil of Piyadassi the deed would be ineffective as an appointment. Our Courts have held that a Viharadhipathiship cannot be transferred during a Bhikku's life time but the deed which purports to do so may, in certain circumstances, be effective as an appointment of a successor. In fact the deed P (*b*) is headed " Deed of Appointment ". One has also to remember that such deeds are revocable.

I have carefully examined the terms of the deed P (*b*) and I am unable to infer from them any intention on the part of Piyadassi to abandon his rights. On the contrary, his assertion in this deed of 1936 that he is the Viharadhipathi of the temple negatives the suggestion that he had abandoned this temple in 1933.

The oral evidence of Rev. Dhammapala that Piyadassi, on his return from Aluwihare, went to his village Malawa and associated with laymen until Piyaratane called him to this temple, was relied on as favouring the inference of abandonment. I do not agree. Piyaratane, according to Piyadassi's complaints, e.g. D3, was an influential priest, and Piyadassi would have found some difficulty in entering the temple immediately after his return. Perhaps Piyaratane later thought that it would be prudent to let Piyadassi occupy a part of the temple in the hope of keeping him satisfied. Piyadassi, therefore, was in fact in occupation of a part of the temple premises, and D3, D4 and P28 are complaints he had made in 1936 to the Sangha against Piyaratane alleging that he (Piyaratane) was usurping the complainant's rights. These documents are against the suggestion that there was an abandonment by Piyadassi.

The appellant also relied on the evidence of Rev. Revatha who had stated that when Piyadassi complained to him, he informed Piyadassi that he had already appointed Piyaratane as the Incumbent. The learned District Judge has not accepted this evidence, which the document P30 does not support. P30 is a letter written to Piyadassi by Rev. Revatha on 2.10.46 in which he addresses Piyadassi as the Viharadhipathi of the temple in dispute.

On the other hand, there are a number of documents which support the respondent's contention that there was no abandonment of his rights by Piyadassi. Apart from D3, D4 and P28 referred to above there are, in chronological order, P9 of 1935 a deed of gift of certain lands (though

subject to a life interest) to Piyadassi as the Viharadhipathi of this temple; D7 of 1938 in which Piyadassi refers to P (*b*) and informs the High Priest that he had appointed Seelananda to render him assistance and sign his correspondence as Viharadhipathi of this temple; P17 of 1942 which Piyadassi signs as the Viharadhipathi of this temple complaining against Piyaratane.

P18 shows that Piyaratane, when summoned before the Chief Priest and a committee, obtained a date to show cause against the complaint (P17) but avoided attending meetings thereafter on one excuse or another (P19 is one of them). P (*y1*) of 1951 is a census return in which Piyadassi still describes himself as the Viharadhipathi of the temple in dispute. There is also P16 of 1952 when Piyaratane wrote to the Government Agent to get his name entered on a list as the owner of certain paddy fields in order to obtain some benefits for purposes of cultivation. He describes the fields as those of Piyadassi and the fact that he made the application only after Piyadassi's death indicates that the latter possessed these fields during his life time. It was suggested that the fields were the "Puthgalika property" of Piyadassi, but the only evidence on the point—that of the respondent—that it was "Sangika" property was not contradicted.

On a review of all the evidence on this point there is, at least, a great deal of doubt as to whether Piyadassi abandoned his rights or not, and the learned District Judge was right in holding that there was no proof of abandonment.

The last point raised on behalf of the appellant was the question of pupilage. It was submitted that the District Judge was wrong in holding that the respondent had established that he was a pupil of Piyadassi. The respondent was robed as a pupil of Gunaratana in 1938 (Gunaratana being the second pupil of Seelananada the grantee on P (*b*)). Admittedly the respondnent was ordained on 11.6.46 and his robing tutor Gunaratana was one of his ordaining tutors. The only question is whether Piyadassi was the other.

Three witnesses Rev. Gunaratana, Rev. Dhammapala and Carolis Appuhamy (who was Rev. Ratanasara before he disrobed) had given evidence to the effect that they were present at the ordination ceremony; that Piyadassi too was present at the commencement of the ceremony but was taken ill when the ceremony was in progress and had left before it was completed. So that the "Declaration" under section 41 of the Buddhist Temporalities Ordinance (P3) was signed by Piyadassi on a later occasion at another temple.

There are certain discrepancies in the evidence of these witnesses which, in my view, is not surprising. When witnesses try to describe an incident which had taken place about eight years before they were called upon to testify, their recollection on every detail cannot be relied

on. The learned District Judge has addressed his mind to these infirmities and has accepted their evidence. He has not said so, in so many words, but this is obvious from the reasoning in his judgment.

Apart from this evidence there is the document P1—The Upasampada Scettu. It is prepared in foil and counter-foil immediately after the ordination takes place and one part of it is issued to the Bhikku who has just been ordained. The serrated edge in P1 indicates that is the foil. In its body the robing tutors are set out as Gunaratana and Piyadassi.

According to the evidence of Rev. Amunugama Vipassi, the then Anunayake Priest, such an entry is possible only if Piyadassi was present, or if he had left earlier, on his signifying his assent (usually by a letter) to be named as the tutor. Rev. Gunaratane when questioned on this point had stated that he did write out a letter to the Maha Nayaka when Piyadassi left. It was pointed out that he had not said so when he gave evidence in D. C. 3760; but that is not a matter of importance; probably he was not questioned on the point. There is also evidence to show that letters of that nature were not preserved at that time. P1 therefore is a very strong bit of evidence which supports the respondent's claim to be the pupil of Piyadassi.

Then there is the form P3, already referred to, which on the face of it shows that Rev. Piyadassi is the respondent's tutor. The evidence of Rev. Dhammapala relating to the circumstances in which Rev. Piyadassi signed it has been accepted by the learned District Judge. These forms are sent in duplicate to the Registrar-General who retains one copy (which forms his register) and forwards the other to the Mahanayake of the Nikaya.

It was submitted for the appellant that the learned District Judge had misdirected himself when he held that the entries in P3 were prima facie evidence of the facts contained therein. The relevant portion of section 41 (6) of Cap. 318 reads as follows :—

> " Such registers kept by the Registrar-General shall for the purposes of this Ordinance be prima facie evidence of the facts contained therein in all Courts and for all purposes. "

As pointed out by learned Counsel for the respondent the words " For purposes of this Ordinance " is not the same as " For proceedings under this Ordinance ", and I am in agreement with learned Counsel's submission that the registers provide prima facie evidence for purposes of administering the law laid down by the Ordinance, in all Courts and for all purposes. The respondent filed this action to establish a right to the performance of certain functions under this Ordinance. (Vide section 18.)

I see no reason to disturb the learned District Judge's finding on the facts.

Since I am of the view that the respondent is the Viharadhipathi of this temple but that the appellant succeeds only because the action is time-barred, I am not disposed to cast the respondent in costs.

The appeal is allowed.

MANICAVASAGAR, J.—

I have considered the relevant evidence on the issues of abandonment and pupillage, and I agree with the conclusion reached by Sirimane J. on both matters. On the issue of prescription too I agree with his decision, but I desire to state my views.

The question for decision is whether the respondent's cause of action is the one which accrued to him on 1.2.54, that is the day following Piyaratane's death ; or, did a fresh cause of action accrue in June 1958, when, by the order of the District Court, the respondent was dispossessed and the appellant restored to possession.

An action for declaration to a status is barred unless it be brought within three years of the accrual of the cause of action ; if the cause of action was not extinguished the respondent's claim is undoubtedly barred by time running against him.

The facts are set out in the main judgment. The respondent was on 14.12.58 put in possession of the Vihare and enjoyed the rights pertaining to the office of Viharadhipathi to which he had been declared by the judgment of the District Court. His Counsel submitted that since he had the enjoyment of his rights, there was nothing more he need do or ask as the wrong which he complained of was remedied to his satisfaction ; therefore, his cause of action was extinguished and on the subsequent restoration of possession to the appellant, a fresh cause of action accrued to the respondent. He cited a judgment of the High Court of Lahore [1] which I think does not help him. The facts of the Lahore case are briefly as follows : an agreement between the parties provided for arbitration ; the arbitrator made an award on 25.7.09 ; *on the application of the defendant* the award was made a decree of Court, and the defendant paid the decretal amount ; the decree *was completely satisfied.* The defendant in spite of his having set the Court in motion preferred an appeal to the Chief Court ; the decree was set aside, and the defendant obtained a refund of the money he had paid. The plaintiff then brought an action for the recovery of the money awarded to him by the arbitrator ; the defendant contended that the claim was time-barred, as the cause of action accrued on the date of the award, viz 25.9.09 ; the argument to the contrary was that it accrued from the date on which the Chief Court set aside the decree, namely, 4.8.13 ; the High Court held *it was*

[1] *Kartar Singh v. Bhagat Singh A. I. R. (1921) Lahore 70.*

sufficient in equity to say that the suit was within time, by holding that the earlier cause of action was extinguished and had given way to a fresh cause of action. It appears to me that the principle underlying this decision was that the consequence of an erroneous order should fall on the party to blame, and the defendant in the case was to blame; for after adopting the award and satisfying the decree he proceeded to have it annulled; the plaintiff therefore should not be made to suffer.

In the present matter, counsel for the appellant contended that his client had perforce to obey the order of the District Court, and deliver possession to the respondent; he submitted that the respondent cannot make use of a possession thus acquired to plead the extinguishment of the cause of action; for *he had not the full enjoyment* of all his rights though he functioned as Viharadhipathi; the appellant continued to deny the respondent's claim; he had appealed from the judgment of the District Court; the matter at the time he got possession had not been finally adjudicated upon. It is also a relevant fact that when the respondent took possession of the Vihare on 14.12.58, his right to sue on the cause of action which accrued on 1.2.54 was barred by lapse of time. I think there is considerable force in counsel's submission; should the respondent be permitted to make use of a possession which he would not have had but for the erroneous decision of the District Court? What should the Court do in such a situation? Should it enable the respondent to utilise the advantage he had acquired, or, should the Court assist the appellant who was the victim of the wrong decision? I think it is the inherent duty of the Court to be just, and the justice of this cause demands, in my view, a decision in favour of the appellant. We must bear in mind that but for the erroneous order of the original Court the appellant would have continued in possession. The respondent cannot be heard to complain; the decision of the Court was a result of the wrong procedural step he took; the consequences of his own error must fall on him; had he been correctly advised he should have sued the appellant within three years of the death of Piyaratane. In my view, the appellant should not suffer. I am fortified in the view I have taken by these words of Cairns L.C. which were quoted with approval by Lord Carson in the judgment of the Privy Council referred to in the judgment of Sirimane, J.

> " One of the first and hightest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors. . . . . "

The cause of action which began on Piyaratane's death was not, in my opinion, extinguished.

I agree that the appeal should be allowed without costs.

Appeal allowed.