

1959 Present: H. N. G. Fernando, J., and T. S. Fernando, J.

R. DHARMAWANSA THERO, Appellant, and R. M. UKKU BANDA  
*et al.*, Respondents

S. C. 97—D. C. Chavakachcheri, 964

*Buddhist ecclesiastical law—Dedication of land to Sangha—Can donor subsequently contradict his right to dedicate the land?—Is notarial transfer necessary?—Prevention of Frauds Ordinance.*

A donor who dedicated immovable property to the Buddhist Sangha cannot subsequently derogate from his own grant by attempting to contradict the representation in the dedication that the property belonged to him. In such a case the maxim *allegans contraria non est audiendus* is applicable.

Immovable property, when it is duly dedicated to the Sangha, becomes *Sanghika*, although no notarial document is executed in accordance with the Prevention of Frauds Ordinance.

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

N. E. Werasooria, Q.C., with H. W. Jayewardene, Q.C., P. Ranasinghe and M. L. de Silva, for the defendant-appellant.

- Sir Lalita Rajapakse, Q.C., with T. B. Dissanayake and D. C. W. Wickremasekera, for the plaintiffs-respondents.

*Cur. adv. vult.*

March 24, 1959. H. N. G. FERNANDO, J.—

The three plaintiffs instituted this action for a declaration that they are entitled to the possession of the land in dispute and for the ejection of the defendant therefrom. It is clear that the land is the property of the Crown, and that in the year 1947 one Peduruappuhamy was the tenant of the land under a permit from the Crown.

It would appear that a Society called the Sri Sugatha Samodhaya Society was formed in 1938 with the object of establishing a Buddhist temple at Kilinochchi, and funds were gradually collected for that object.

In or before the year 1947, the Society commenced to put up temporary structures on the land held by Peduruappuhamy under his Crown permit, the expectation being that the Society would obtain the consent of the appropriate authority to a transfer of the rights under the permit. The Government Agent was informed of these wishes of the Society by letter dated 22nd November 1947.

The trial Judge has held on the evidence that the land was dedicated to the Sangha by the members of the Society "under the presidency of Randonpe Somasiri Tissa", and the documents make it clear that the ceremony of dedication took place on 23rd November 1947. It is quite beyond doubt that the Society intended Somasiri Tissa to be the *Viharadipathi*, and that the defendant monk was subsequently placed in charge of the temple by Somasiri Tissa. Despite these circumstances the learned Judge was constrained to hold that the property did not become *Sanghika*, for in his view the donors "did not have the necessary alienable interest in the land".

The matter of the transfer of rights in the land from Peduruappuhamy appears to have involved the usual delays, and it was not until 1951 that a lease was granted by the Crown to the three plaintiffs, "as trustees of the Society". In consequence of certain disputes between the defendant on the one hand, and the plaintiffs or the Society on the other, the plaintiffs instituted this action in 1955 relying on the right to possession conferred on them by the Crown lease, and averring that they do so "as Trustees" of the Society.

The writing dated 23rd November 1947, described as a "deed of dedication" is signed by Peduruappuhamy and all the officers of the Society. It refers to the land in question as being land "*belonging to Peduruappuhamy, . . . having been purchased through the Society . . . for the purpose of erecting a Buddhist monastery*". There is no representation here that the land is the property of the Crown, but on the contrary a representation that it is held by Peduruappuhamy on behalf of the Society. A report subsequently presented to and adopted by a meeting of the Society confirms that the land was duly dedicated to the Maha Sangha of the Amarapura Sect. In effect therefore, the plaintiffs, who claim in this action to represent the Society, are now attempting to contradict the representation made in 1947 that the land was held in the name of Peduruappuhamy for and on behalf of the Society. In my opinion, the simple answer to this claim is stated in the maxim *allegans contraria non est audiendus*.

The matter is put in a slightly different form in the English Law, namely that "a man shall not derogate from his own grant". The Society having in 1947 made a grant on the basis that it was owner, cannot now derogate from that grant by setting up the title of the Crown and its own leasehold interest under the Crown. In these circumstances, it is scarcely necessary for the defendant to rely on the decision in *Tissera v. William*<sup>1</sup> to the effect that a donee who is in possession of property

<sup>1</sup> (1944) 45 N. L. R. 358.

gifted to him may avail himself of the *exceptio doli* when he is sued by the donor or a person claiming under the donor.

Another argument raised at the appeal by counsel for the plaintiff has to be dealt with briefly, namely that, although the ceremony of dedication has a religious significance, a dedication is in law ineffective unless it is accompanied by a notarial document executed in accordance with the Prevention of Frauds Ordinance. Counsel cited no precedent in support of this contention, and indeed there are numerous decisions of this Court which negative it. In *Saranankara Unnanse et al. v. Indajoti Unnanse et al.*<sup>1</sup> Bertram C. J. accepted the view that property becomes *Sanghika* by virtue of the formal ceremony of dedication. In *Wickremesinghe et al. v. Unnanse et al.*<sup>2</sup> there was no evidence of any notarial transfer, but the Court nevertheless considered whether the property had become *Sanghika* through dedication and decided that no dedication had taken place. In the very recent case of *Dhammavisuddhi Thero et al. v. Dhammadassi Thero*<sup>3</sup> the present Chief Justice held that property was *Sanghika* although no notarial document was produced in proof of a transfer to the Sangha or to a particular priest on behalf of the Sangha.

For the reasons set out above, the judgment of the District Court declaring the plaintiffs entitled to possession of the land in dispute and directing the ejectment of the defendant must be set aside and order made that the plaintiffs' action be dismissed with costs.

The defendant-appellant will be entitled to the costs of this appeal.

T. S. FERNANDO, J.—I agree.

*Appeal allowed.*

