

1921.

Present : Ennis A.C.J. and Schneider A.J.

SIRINIWASE *v.* SARANANDA.

115—D. C. Kegalla, 5,104.

*Buddhist ecclesiastical law—Succession to the incumbency of a vihare—
Right of other pupils to remain in the vihare.*

K, who was the chief incumbent of a vihare, died about twenty years ago. He had a pupil, R, who succeeded him, and died in 1919. On the death of R, plaintiff, who was robed by K (in 1900), claimed to be the chief incumbent, and his claim was contested by defendant, who was a pupil of R, ordained in 1916.

Held, that (1) as plaintiff was senior by ordination to the defendant, and senior in proximity to the founder, he was entitled to be chief incumbent ; (2) the defendant was entitled to reside in the vihare, and to be maintained from the funds.

THE facts appear from the judgment.

A. St. V. Jayawardene (with him *R. L. Pereira* and *D. B. Jayatilake*), for the appellant.

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

Cur. adv. vult.

January 21, 1921. ENNIS A.C.J.—

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*Srinivasa
v. Sarabanda*

This was an action between two Buddhist priests relating to the question of succession to a vihare. It appears that one Sonuttara Unnanse was the chief incumbent of the vihare in question, and had a pupil, Kukulapone Sonuttara Unnanse, who succeeded as chief incumbent, and died about twenty years ago. Kukulapone admittedly had a pupil, Ratnapala, who died in 1919. The plaintiff says that he also was a pupil of Kukulapone, and was ordained in 1900. On the death of Ratnapala the plaintiff claimed to be the chief incumbent of the temple, and his claim was contested by the defendant, who is a pupil of Ratnapala, ordained in 1916. The learned Judge has found as a fact that the plaintiff has not satisfactorily established his contention that he was robed by Kukulapone. This conclusion is arrived at, not so much on a disbelief in the evidence submitted by the plaintiff, as in a belief that it was insufficient to establish the fact. The defendant admittedly knew nothing on the question as to whether the plaintiff had been robed by Kukulapone or not, and when the plaintiff first made his claim on Ratnapala's death, the parties went to the Disawa, who is the President of the District Committee, and the Disawa has given evidence that at the inquiry held by him the defendant took up the position that the plaintiff had been robed, but that subsequently he had been disrobed, and that it was on that ground that the defendant would not admit the plaintiff to possession. At the trial the defendant has taken the position of denying that the plaintiff was robed. The only witness called by him was one Gunaratne, a priest thirty-five years old, but as the plaintiff asserted that he was robed thirty-six years ago, this priest could know very little on the subject. There remains, therefore, nothing but the evidence led by the plaintiff. The plaintiff has sworn that he was robed by Kukulapone. He called his father, who supported him in the statement. The plaintiff then further said that Kukulapone handed him over to Kondanne and his pupil Sobita to be taught. Kondanne is dead. Sobita has given evidence that when the plaintiff was brought to them, Kukulapone informed them that the plaintiff was his pupil. Later, it appears that Kondanne and Sobita presented the plaintiff for ordination, and a copy of the register of ordination has been put in. Counsel for the defendant-respondent suggests that this register infers that the plaintiff was a pupil of Kondanne and Sobita rather than of Kukulapone. I am not satisfied that it goes so far as that. It merely shows that these two priests presented the plaintiff for ordination. In addition to the evidence of Sobita, there is the evidence of two priests, who testify to having seen the plaintiff with Kukulapone Sonuttara performing the duties of a "small" priest in attendance. There is also the evidence of a painter, which is not very strong, to the effect that he actually saw the robing ceremony. There is not a word in contradiction of this

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evidence, and it is not easy to see what other evidence the plaintiff could have produced after thirty-six years. There is evidence that the plaintiff is a duly robed and ordained priest, that he made a claim the moment he was entitled to become chief incumbent, and there is no evidence that the plaintiff was robed by any one other than Kukulapone as stated by him. In the circumstances, I feel it would not be right to set aside all this evidence as insufficient to establish the plaintiff's case, and on the finding of fact I would accordingly reverse the decision arrived at by the learned Judge, and hold that the plaintiff was robed by Kukulapone.

One other question only remains to be considered in the case. Mr. Pereira, for the defendant-respondent, argued that if the plaintiff were a pupil of Kukulapone, he would not be entitled as against the defendant to be the chief incumbent. On this point we have been referred to a number of cases by Mr. Jayawardene, the principal of which are *Dammaratna Unnanse v. Sumangala Unnanse*¹ and *Saranankara Unnanse v. Indajoti Unnanse*.² The evidence taken in the earlier of these two cases has been published in 20 N. L. R. 506. A number of experts on Buddhist law gave evidence in answer to certain questions put by the Court, and all of them agree that on the death of the chief incumbent more than one person could succeed. They do not say to what. But one witness explained that where A left two pupils B and C, and B had a pupil E, and C pupil F, and B died before A, C would succeed and become chief incumbent as the surviving pupil of A, while E would also have the right to remain in the vihare and to be maintained out of the income. It would seem, therefore, that these experts all regarded the right of succession as a right to remain in the vihare and to be maintained out of the income, while the right to be what has been referred to as the chief incumbent or the person in authority in the temple was a question of seniority, or appointment, or experience, or election, or cleverness. But that generally, as among the pupils of a founder or first incumbent, they succeed by seniority of ordination. But as between the pupils of these pupils, certain answers seem to suggest that the seniority of the original pupil may have conferred some seniority between the pupils in the next line. Be that as it may, in the present case there is no difficulty, as the plaintiff is senior by ordination to the defendant, and is senior in proximity to the founder. I would accordingly allow the appeal, and declare the plaintiff to be the chief incumbent: I would observe that the defendant also is entitled to reside in the vihare and to be maintained from the funds, and that the plaintiff's prayer to eject him cannot be granted. The plaintiff will be entitled to the costs on appeal and in the Court below.

SCHNEIDER A. J.—I agree.

Appeal allowed.

¹ (1910) 14 N. L. R. 400.

² (1916) 20 N. L. R. 385.